BANKING LAW AND PRACTICE IN INDIA

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BANKING LAW AND PRACTICE IN INDIA

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WITH A FOREWORD BY

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PREFACE TO THE FIFTH EDITION

The fourth edition of the book was sold out within about a year after its publication but owing to the shortage of paper and certain other difficulties the present edition had to be delayed. Opportunity has been taken to refer to the proposals contained in the Indian Bank Bill which is before the Legislature and also to the important recent rulings affecting bankers.

Thanks are due to Mr. J. A. Mulky, B. Com., who has been of great help in correcting the proofs and the preparation of the Index.

Bombay,
1st August 1945.

M. L. TANNAN.

FOREWORD TO THE FOURTH EDITION

I have great pleasure in adding this brief foreword to the fourth edition of Mr. Tannan's interesting book on banking. It has occupied, for a long time, a coveted place as a standard work on Indian banking law and practice. Mr. Tannan is to be congratulated on keeping it up to date by the publication of one edition after another as the demand grew. This branch of the law has, under the pressure of modern times, undergone important changes and the legal decisions thereon—often the despair of the layman—have added to the complexity of the subject. As is usual with many legal works which ultimately became classical in their respective spheres, Mr. Tannan began with the modest object of providing a comprehensive text-book on the subject. Its popularity, however, grew as its usefulness was increasingly recognized and now the fourth edition is being offered to the public. I have no doubt that it will meet with the same success as its predecessors.

Mr. Tannan has taken great care to fill the book with interesting details, which will prove useful to the student, the lawyer and also the businessman. To the lawyer, it will prove a mine of useful information and, as the rulings have been carefully sifted and arranged under appropriate citations, references to decided cases can be made without loss of time even by a busy practitioner. The captions of the chapters have been attractively arranged, for example, "Banker and Customer", "Payment of Customers' Cheques", etc.—matters in which we all have interest as they vitally concern our daily life. The law relating to the payment of customers' cheques by a banker has grown complex in modern times, but it will ever retain its interest for all of us who have occasion to deal with banks and draw cheques upon them from day to day. It will be remembered that, at one time, a banker was considered to be a mere depository, but it has now been definitely recognized that the relation between a customer and his banker is primarily that of a creditor and a debtor. The chapter relating to this question is one of the most interesting in this book and contains some cautious hints both for the banker and the customer. How many of us, who draw cheques from day to day upon our banks, pause to consider the precious rule in *Young* v. *Grote*, that a customer of a bank owes a duty to the bank in drawing a cheque to take reasonable and ordinary precautions against forgery and if, as the natural and direct result of the neglect of those precautions, the amount of the cheque is increased by forgery, the customer must bear the loss as between himself and the banker? Bankers will be happy that, notwithstanding certain doubts thrown upon this principle, its authority has now been restored, with the

proper limitation that it is no part of the customer's obligation to the bank to take *extraordinary* care in the drawing of the cheque.

There are many other parts of this book which are equally interesting, for instance, how a bank employs its funds, the functions of a Reserve Bank, Bankers' Clearing House, etc., etc., but it is beyond the scope of this brief foreword to notice them in detail. Forms have been added in Appendix A, which will add materially to the usefulness of the volume. I have no doubt that, owing to all these features and many more which the reader will discover for himself, the book will prove extremely useful not only to the student and the businessman but to all those who deal with banks in the ordinary course of their life. I wish the book all success.

Ashram,
Malabar Hill,
Bombay,
15th June, 1942.

M. R. JAYAKAR.

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LIST OF ABBREVIATIONS.

A. C. ..	.. Law Reports, Appeal Cases, House of Lords.
A. I. R. ..	.. All India Reporter.
All. ..	.. Allahabad Series (Indian Law Reports).
B. L. R. ..	.. Bengal Law Reports.
B & Ad. ..	.. Barnewall and Adolphus' Reports, King's Bench.
B. & C. ..	.. Barnewall and Cresswell's Reports, King's Bench.
Bing ..	.. Bingham's Reports, Common Pleas.
Bing. New Cases	.. Bingham's New Cases, Common Pleas.
Bom. ..	.. Bombay Series (Indian Law Reports).
Bom. L. R.	.. Bombay Law Reports.
C. A. ..	.. Court of Appeal Reports.
C. B. ..	.. Common Bench Reports.
C. B. N. S.	.. Common Bench Reports (New Series).
C. P. ..	.. Law Reports, Common Pleas Division.
Cal. ..	.. Calcutta Series (Indian Law Reports).
Camp. ..	.. Campbell's Reports, Nisi Prius.
Ch. ..	.. Law Reports, Chancery Division, since 1890.
Ch. D. ..	.. Law Reports, Chancery Division, 1875-1890.
De. G. & J.	.. De Gex and Jones's Reports, Chancery Appeal.
Doug. ..	.. Douglas' Reports, King's Bench.
E. & B. ..	.. Ellis and Blackburn's Reports, Queen's Bench.
Ex. ..	.. Exchequer Reports, 1847-1856.
Ex. D. ..	.. Law Reports, Exchequer Division, 1875-1880.
H. L. C. ..	.. Clark's Reports, House of Lords.
Hare ..	.. Hare's Reports, Chancery, 1841-1853.
K. B. ..	.. Law Reports, King's Bench Division, since 1900.
L. J. Ch. ..	.. Law Journal, Chancery, 1831—(current).
L. J. Q. B.	.. Law Journal, Queen's Bench, 1831—(current).
L. R. ..	.. Law Reports.
L. T. ..	.. Law Times (New Series).
Lah. ..	.. Lahore Series (Indian Law Reports).
Moo. I. A.	.. Moore's Indian Appeal Cases, Privy Council, 1836-1872.
M. & Gr.	.. Manning and Granger's Reports, Common Pleas.
M. & W.	.. Meeson and Welsby Ex.
Mad. ..	.. Madras Series (Indian Law Reports).
P. C. ..	.. Privy Council.
Q. B. ..	.. Queen's Bench Reports, 1841-1852.
Q. B. D.	.. Queen's Bench Division Law Reports, 1891-1901.
R. R. ..	.. Revised Reports.
T. L. R.	.. Times Law Reports.

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BANKING LAW AND PRACTICE IN INDIA

CHAPTER I

INTRODUCTORY

Oh, East is East, and West is West, and never the twain shall meet,
Till earth and sky stand presently at God's great judgment seat.

The Impact of the West.

A NEW ERA.—The truth of these well known lines by Mr. Kipling is being falsified. The material West is fast converting the spiritual East, the twain have met, and India, like other countries of the East, is having her due share in the changing destiny. The old placid, dreamy contentment of philosophers is being steadily replaced by the stir and bustle characteristic of the new dawn. A meteoric growth of commercial concerns and industrial organizations is visible in every nook and corner.

"OLD ORDER CHANGETH." *Times change, and we with time.* The old order has changed yielding place to new, and we must have new needs with the new hour. To keep pace with the countries born and bred in the lap of materialism, the backward country must be equipped with all the facilities enjoyed by its rivals, or perish in the struggle for existence. Keen competition, carried to its most bitter extremes, is the dominant note of materialism. He, who runs, may find the principle of survival of the fittest illustrated right and left. A single weak link, and off goes the chain!

BANKING ORGANIC TO MODERN TIMES. Railways, steamships, aviation, posts, telegraphs, and other innovations of the modern era, are playing their due part in this struggle in India. One of the important quarters, into which the rays of the new light have only very recently penetrated, is the sphere of banking.

History of Banking in India.

MONEY ECONOMY.—From times immemorial, the banker has been an indispensable pillar of Indian society. He may have been missing, for aught we know, in the good old days, when self-sufficiency was the law of the land. The introduction of the division of labour, however, brought in its wake the use of money, without which there was a peculiar complexity and trouble in the matter of exchanges. Money economy, in its turn, could not do without the institution of banking for any considerable time.

CREDIT IN THE ANCIENT ARYAN POLITY.—There is plenty of evidence to show, that even prior to the advent of occidental ideas, India was not a stranger to the conception of Banking. "Loans and usury were well understood in those days, and Rishis (who, we should always remember, were worldly men in those days and not hermits or anchorites) occasionally lament their state

of indebtedness with the simplicity of primitive times" (Civilisation in Ancient India by R. C. Dutt, revised edition, Vol. I, p. 39). Reference is often made to debts contracted at dicing. To pay off a debt was called *Rnam Sam-ni.* Allusion is made to debts contracted without intention of payment. This shows that the giving and taking of credit in one form or other must have existed as early as the Verdic period. However, the transition from money-lending to banking must have occurred before Manu (The laws of Manu, Bühler, The Sacred Books of the East, Vol. XXV, p. 286, 1866) could have devoted a special section to the subject of Deposits and Pledges, where he says, "A sensible man should deposit his money with a person of good family, of good conduct, well-acquainted with the law, veracious, having many relatives wealthy and honourable (Arya)." He further gives us rules, which governed the policy of loans and rates of interest. Sir Richard Temple (Sir Richard Temple's lectures: Journal of the Institute of Bankers, Vol. 2 (1881)) testifies to the fact, that banking business was carried on in ancient India. Dr. Pramath Nath Banerjee, in his book, Public Administration in Ancient India, quotes from Gautama, Brihaspati and Budhayana, verses regarding the regulation of the rates of interest. Reference is also made to the same in Kautilya's Arthashastra.

BANKING MEANT MONEY-LENDING—Although, in recent years, the history of banking in India has begun to receive attention, the subject still offers a wide scope for research work; but it is not necessary, for our purposes, to give any detailed description of the banking system, which served this country before the advent of the British rule. However, banking in those days meant largely money-lending, though certain other functions of modern banks were not unknown to the bankers.

THE BANKER'S STATUS AND SERVICES—Bankers in India have always been regarded as very important members of the community in Government, as well as in social circles. Land revenue was generally collected in kind, while the services were almost invariably paid in cash. The banker's assistance was more or less indispensable in this connection. Even in other financial matters of State, he was frequently consulted. In the unsettled days of civil wars, when insecurity was so pronounced a feature of the times, the banker was almost the only shelter in money matters. He was the only reliable agency for the deposit of jewellery, cash and hoardings in other forms, as was the case with the Goldsmiths, in England, in the 17th century. State officials had not much reputation in this respect. The Indian banker, however, was highly esteemed, and regarded as a worthy specimen of commercial morality. The time-honoured adage: *No salvation except through the preceptor; no credit except through the money-lender*, is significant in this respect.

The Hundi.

IN THE DAYS OF THE MAHABHARATA—The public confidence, enjoyed by the Indian banker, can well be realized from the fact, that his hundis (inland bills of exchange) date back to the days of the Mahabharata. A legend of the times of Lord Krishna has it that Narsinha Mehta of Junagarh drew a hundi on Seth Samalshah of Dwaraka. According to another tradition, Vastupal Tejpal drew a hundi of ten crores on the Nagar Seth (city banker) of Ahmedabad and the temples of Dilwara were built with the money (Indian Indigenous Banking, by Dr. L. C. Jain, p. 71).

ITS MEANING, COLLECTION OF DEBTS—The word hundi is said to be derived from the Sanskrit root "hund", meaning to collect. Its derivation expresses

the purpose for which originally such instruments were used. Even in modern times, bills of exchange are generally used for the collection of debts. For instance, when a merchant in Bombay sells goods to a merchant in Delhi, the former draws bill of exchange on the latter so as to collect the price of those goods. Similarly, when a merchant in Calcutta desires to collect a debt, due from a merchant, in Madras, the former may draw a hundi for the amount upon the latter.

THE HINDUS AND THE USE OF THE HUNDI—Although probably strangers to the use of paper money the Hindus as we have seen, had been accustomed to the use of the hundi from very remote times. Among them, the banking business was confined to the issue and discount of bills of exchange, money lending, and money changing. Very often, banking business was carried on along with dealings in grains, cloth etc. etc., or with agency business. The importance of the part played by the banker in the commercial markets, as well as in agricultural circles, cannot be denied. The hundi system was the backbone of all commercial transactions. The transfer of funds from one place to another, at a fair distance, took place with the help of the hundies. The agriculturists, as it is true to some extent, even at the present time, had to depend on the banker for financial assistance.

Loans.

PERSONAL ELEMENT Bankers lent money against personal, as well as other securities, such as, ornaments, goods and immovable property. For everyday loans, the banker's knowledge of individuals and their circumstances, on account of the narrow circle in which these transactions had to be carried out, rendered him more useful than even the modern public banks, which are practically impersonal in their character, and are hedged round with many formalities, thereby sometimes annihilating their utility at the critical moment. The personal relations between the banker and his customers were of a cordial nature.

USURY— Usury, or high rate of interest, was widely prevalent in India. In Bengal, money was frequently lent to farmers at forty, and sometimes even at sixty per cent., per annum, while the standing crop was mortgaged for payment of the loan. Most writers attribute usury to the state of insecurity in India, and the risk involved on account of the low financial status of the debtors. No doubt, these factors played a great part, but they were not invariably the only causes. The force of custom and limited communication barred the free play of economic forces of supply and demand. The adjustment of scales in such a state of society could not be so quick as it is with modern facilities.

THE MONEY-LENDER—*Banking is my brains and other peoples' money.* This most apt definition of banking given by the Bombay Provincial Banking Enquiry Committee, is not applicable to money lending, which hardly constituted banking, as it is understood in the modern monetary world. The early Indian banker had comparatively little of deposit or discount business, or dealings in other peoples' money, which is the unfailing characteristic of modern banking. He may be called a money-lender rather than a banker.

HIS APPARENT DECLINE—The times have changed, and Indian indigenous banking of the "good old days" has undergone many alterations, on account of the different forms and functions, and the extreme complexity of modern business. All the same, the old system still retains its importance, though

not to the same degree. The payment of taxes in cash, better means of communication and transportation, uniform currency, the security of the present government, and the establishment of public joint stock banks, have taken away a good deal of business from the hands of the Indian money-lender; still it cannot be denied that he occupies a very important place in the credit organization of the country.

The Rise of Public Banks in India.

AGENCY HOUSES—For the beginning of the occidental banking in India we must go back to the Calcutta Agency Houses, the trading firms, which undertook banking operations for the benefit of their constituents. Prominent among these were Messrs. Alexander & Co., and Messrs. Fergusson & Co. Both firms combined banking with other kinds of business, and both were the predecessors of the early joint stock banks in India. The Bank of Hindostan, a mere appendage of the former, was the earliest bank under European direction in India.

FATAL COMBINATION OF BANKING WITH COMMERCIAL ENTERPRISE—That banking is incompatible with any other kind of business, was illustrated by the commercial disaster of 1829–32. Banking needs to be run with great caution, while adventure is the essence of other kinds of business, *e.g.*, commerce. Reckless speculation, and a policy of placing profits before safety, were responsible for the failure of the agency houses, which also involved the collapse of their banking departments. Having successfully withstood three severe runs on it, the Bank of Hindostan could not survive the failure of its parent firm in 1832. Even in the case of the Sholapur Bank, Ltd., which went into liquidation in 1918, the failure was attributed to this fatal combination. Besides the usual banking business, the company had the power to do business of "Merchants or capitalists either as principal or agents." His Lordship, the then Chief Justice of Bombay, passed very strong strictures (*Govind v. Ramnath*, 32 Bom. L. R. (232), and suggested that legal prohibition of combining banking business with other commercial enterprise could have made what happened there more difficult, if not impossible. The Indian Legislature has now recognized the principle of separation of banking business, from any other kind of commercial undertaking. Section 277G (1) of the Indian Companies Amendment Act, 1936 lays down that no company formed after the commencement of the Act, for the purpose of carrying on business as a banking company or which uses as part of the name under which it proposes to carry on business, the word "bank", "banker", or "banking," shall be registered under the Act, unless its memorandum limits the objects of the company to the carrying on of the business of accepting deposits of money on current account, or otherwise subject to withdrawal by cheque, draft or otherwise, along with some or all of the forms of business specified in section 277F. Sub-section (2) of the said section further provides that,

> No banking company whether incorporated in or outside British India shall after the expiry of two years from the commencement of the said Act carry on any form of business other than those specified in section 277F.
>
> Provided that the Governor-General in Council may, by notification in the Gazette of India, specify in addition to the businesses set forth in clauses (1) to (17) of section 277F other forms of business which it may be lawful under this section for a banking company to engage in.

THE PRESIDENCY BANKS—The Indian Government did not awaken to the great need for banks in India till 1809, the year in which the Bank of Bengal obtained its charter. One-fifth of its capital was contributed by the Government, who shared in the privilege of voting and direction. The charter

GROWTH OF JOINT STOCK BANKS IN INDIA

The Three Presidency Banks

End of	Paid up Capital.	Reserve and Rest	Deposits. Public.	Deposits. Private.	Cash Balances.	% of Cash to Deposits
1870	3,36,25	25,57	5,43,05	6,39,61	9,36,87	
80	3,50,00	55,27	2,91,15	8,40,28	7,41,45	
90	3,50,00	97,54	3,59,25	14,76,35	12,30,75	
1900	3,60,00	1,29,61	2,80,53	12,88,27	5,04,49	
04	3,60,00	2,50,18	3,17,84	21,96,66	10,21,70	40
05	3,60,00	2,63,37	3,11,91	22,26,37	8,23,01	32
06	3,60,00	2,79,89	3,87,85	27,45,08	10,95,07	36
07	3,60,00	2,94,93	3,35,78	28,61,26	9,47,51	30
08	3,60,00	3,09,22	3,25,79	28,61,53	10,38,72	33
09	3,60,00	3,18,22	3,19,76	32,65,03	11,65,56	33
10	3,60,00	3,31,03	4,23,63	32,34,38	11,35,12	31
11	3,60,00	3,40,39	4,38,30	34,19,09	13,58,20	35
12	3,75,00	3,62,61	4,27,01	35,84,47	11,77,38	29
13	3,75,00	3,73,07	5,88,66	36,48,50	15,37,75	36
14	3,75,00	3,89,17	5,61,52	40,04,08	20,83,92	46
15	3,75,00	3,72,50	4,88,67	38,61,19	14,65,24	34
16	3,75,00	3,60,91	5,20,58	44,70,87	17,27,25	35
17	3,75,00	3,67,52	7,71,28	67,71,74	33,77,31	45
18	3,75,00	3,44,58	8,64,28	50,[illegible],75	17,07,62	24
19	3,75,00	3,75,81	7,72,24	68,21,37	23,62,93	31
20	3,75,00	3,77,79	9,02,63	78,01,90	26,03,34	30
21	5,62,24	4,14,74	6,80,01	65,77,99	13,60,23	19
22	5,62,50	4,33,07	14,15,73	57,00,57	15,07,47	21
23	5,62,50	4,55,21	8,56,94	74,19,51	15,01,34	18
24	5,62,50	4,80,08	7,50,26	76,71,22	15,60,26	18
25	5,62,50	4,92,73	5,46,44	77,83,33	17,46,82	21
26	5,62,50	5,09,50	6,45,36	73,89,70	20,30,10	26
27	5,62,50	5,24,07	7,20,23	72,07,22	10,88,65	14
28	5,62,50	5,39,22	7,94,86	73,30,44	10,57,58	13
29	5,62,50	5,47,76	7,59,97	71,64,31	13,99,85	18
30	5,62,50	5,52,56	7,36,91	76,60,06	13,04,24	16
31	5,62,50	5,14,05	8,32,11	63,85,64	11,03,95	15
32	5,62,50	5,42,96	7,06,95	68,36,25	20,97,00	28
33	5,62,50	5,49,36	6,44,11	74,12,77	18,59,76	23
34	5,62,50	5,65,65	6,72,20	74,27,95	18,97,38	23
35	5,62,50	5,76,10	..	74,09,17	19,58,64	25
36	5,62,50	5,78,03	..	78,79,50	8,56,41	11
37	5,62,50	5,80,42	..	81,08,07	13,43,19	17
38	5,62,50	5,55,00	..	81,50,35	8,98,98	11
39	5,62,50	5,60,00	..	87,84,16	11,09,03	
40	5,62,50	5,62,50	..	96,03,17	24,82,81	
41	5,62,50	5,62,50	..	108,91,90	15,26,87	14
42*	5,62,50	5,75,00	..	163,40,28	23,52,90	14
43*	5,62,50	5,85,00	..	214,52,80	53,76,01	25
44	5,62,50	6,00,00	..	237,78,30	28,31,13	12

Indian Joint Stock Banks

(Capital and Reserve over Rs. 5 lakhs.)

End of	No. of Banks	Paid-up Capital	Reserve and Rest.	Deposits.	Cash Balances.	% of Cash to Deposits.
1870	2	9,83	1,82	13,95	5,07	
80	2	18,00	3,11	63,37	16,63	
90	5	33,50	17,59	2,70,78	55,79	
1900	9	82,12	45,60	8,07,52	1,19,04	
04	8	81,49	63,90	11,51,12	1,43,77	12
05	9	84,67	77,82	11,98,92	1,73,50	14
06	10	1,03,94	56,36	11,55,49	1,49,51	13
07	20	2,29,61	63,27	14,00,29	1,94,39	14
08	14	2,39,72	69,11	16,26,49	2,45,10	15
09	15	2,66,07	87,97	20,49,10	2,79,14	14
10	16	2,75,66	00,55	25,65,85	2,80,25	11
11	15	2,85,60	26,54	25,29,11	3,62,05	14
12	18	2,91,64	34,58	27,25,98	4,00,11	15
13	18	2,31,63	32,94	22,59,19	4,00,17	18
14	17	2,51,40	41,88	17,10,58	3,53,18	21
15	20	2,81,39	56,65	17,87,27	3,99,41	22
16	20	2,87,36	73,66	24,41,05	6,03,49	24
17	18	3,03,70	62,99	31,17,01	7,64,84	25
18	19	4,56,45	65,59	40,59,48	9,48,58	23
19	18	5,39,07	24,27	58,99,47	2,16,63	21
20	25	8,37,02	55,46	71,14,64	6,30,70	23
21	27	9,38,80	60,81	76,89,63	5,65,90	20
22	27	8,02,24	61,65	61,63,86	2,03,88	20
23	26	6,89,05	84,39	44,42,82	7,37,01	17
24	29	6,90,55	80,39	52,50,52	1,29,70	21
25	28	6,73,00	86,64	54,49,36	0,09,55	19
26	28	6,76,34	1,08,05	50,68,02	9,11,64	15
27	29	6,88,70	19,35	60,84,11	7,69,86	13
28	28	6,74,84	34,66	62,85,36	8,19,00	13
29	33	7,86,97	3,66,54	62,72,03	9,04,99	14
30	31	7,47,31	4,42,84	63,25,51	7,67,91	12
31	34	7,80,30	4,28,14	62,26,44	7,71,03	12
32	34	7,81,81	4,59,63	72,34,00	9,75,76	13
33	34	7,78,24	4,55,28	71,67,43	10,91,64	15
34	36	7,99,49	4,67,74	76,77,26	11,14,26	15
35	38	8,17,49	5,02,36	84,44,61	19,12,15	23
36	42	8,48,82	5,46,51	98,14,26	15,28,37	16
37	50	7,25,05	5,53,09	106,26,50	16,81,80	17
38	43	7,48,91	5,65,51	98,08,27	14,00,29	14
39	51	8,25,58	5,30,66	100,73,49	16,72,12	17
40	58	9,08,95	5,56,67	113,98,[illegible]	26,26,19	23
41	63	10,12,89	6,06,11	137,64,08	25,60,27	19
42*	69	12,60,52	6,41,04	202,74,88	47,29,76	23
43*	92	18,67,11	7,80,79	338,99,01	82,92,77	24
44						

* Offices in Burma are excluded.

GROWTH OF JOINT STOCK BANKS IN INDIA—*Continued.*

Exchange Banks

Rs. and £ in Thousands.

End of	No. of Banks	Paid up Capital. £	Reserve and Rest £	Deposits. Out of India. £	Deposits. In India	Cash Balances. Out of India £	Cash Balances. In India	% of Cash to Deposits.
1870	3	2,004	180	2,688	52,31	2,611	61,13	
80	4	2,532	541	7,305	3,39,88	2,046	1,80,09	
90	5	6,384	1,699	30,734	7,53,60	5,810	3,50,43	
1900	8	11,803	3,971	54,263	10,50,35	11,945	2,39,58	
04	10	14,878	6,482	82,931	16,32,20	14,230	4,94,05	29
05	10	17,204	7,219	94,536	17,04,45	21,504	6,78,13	18
06	10	15,866	8,421	104,457	18,08,73	18,436	5,10,59	28
07	10	16,671	9,320	94,778	19,17,01	14,860	5,60,20	25
08	10	16,692	9,149	103,289	19,51,52	16,665	5,78,63	17
09	10	18,952	11,211	116,024	20,27,42	18,121	4,15,8	20
10	11	12,734	12,610	134,166	24,79,17	17,810	4,38,51	16
11	12	22,600	13,001	157,764	28,16,90	22,136	4,56,91	16
12	12	23,657	13,980	172,028	29,53,62	23,082	6,14,82	20
13	12	23,640	14,185	181,138	31,03,54	25,688	5,88,24	19
14	11a	22,815	14,157	164,970	30,14,76	40,604	8,39,37	28
15	11	22,681	14,112	179,948	33,54,56	45,111	7,60,13	19
16	10b	22,836	15,095	208,232	38,03,88	41,367	10,14,01	25
17	9c	16,384	14,298	228,001	53,37,53	54,765	[illegible] 74,37	40
18	10d	22,269	17,180	305,937	61,85,60	57,981	15,17,55	20
19	11e	31,931	21,139	433,001	74,35,90	63,571	29,98,32	35
20	15f	54,198	36,019	513,671	74,80,71	84,197	25,17,53	30
21	17g	66,369	45,263	526,473	75,19,61	82,318	23,56,74	28
22	18h	66,541	45,680	527,348	73,38,44	81,654	16,17,63	19

End of	No. of Banks	Paid up Capital £	Reserve and Rest. £	Deposits. Out of India £	Deposits. In India.	Cash Balances. Out of India. £	Cash Balances. In India.	% of Cash to Deposits.
23	18	83,038	56,965	894,946	68,44,28	117,915	14,47,86	19
24	18i	72,538	57,926	844,682	70,63,48	114,648	16,36,69	20
25	18	74,230	64,081	923,561	70,54,57	121,758	9,41,61	13
26	18	77,413	70,590	969,886	71,54,22	136,286	10,72,84	14
27	18	92,706	88,124	1,285,955	68,86,23	204,099	8,13,13	11
28	18	95,803	92,120	1,358,774	71,13,86	236,621	8,05,57	11
29	18	106,344	121,286	1,514,052	66,65,91	219,282	9,04,70	15
30	18	93,393	100,223	1,196,060	68,11,44	208,923	7,70,89	13
31	17j	102,234	83,730	1,130,891	67,47,26	236,738	8,80,73	15
32	18	98,109	75,737	1,131,423	73,06,56	209,250	9,59,99	12
33	18	85,031	58,049	908,307	70,78,42	181,065	6,71,96	12
34	17	82,420	59,198	1,007,504	71,39,97	216,388	7,68,28	10
35	17	79,048	57,986	1,060,952	76,18,33	211,305	12,55,08	15
36	19	67,849	60,443	1,101,427	75,22,55	198,259	10,35,31	18
37	18	66,361	61,951	1,120,649	73,21,01	224,154	10,58,05	19
38	18	67,965	63,551	1,218,760	67,20,42	259,753	6,44,41	13
39	19	69,915	56,044	1,529,629	74,17,71	463,108	6,86,90	
40	20	69,856	58,388	1,804,283	85,32,81	608,854	17,19,40	
41	17	59,420	46,534	1,642,138	106,73,07	481,849	13,39,75	
42	16	60,453	46,234	1,867,148	116,85,27	537,461	12,00,96	
43	16	60,467	46,340	1,909,325	140,19,13	547,159	17,24,47	

(a) Excluding the Deutsch-Asiatische Bank which went into liquidation after the outbreak of war.

(b) Excluding the Delhi and London Bank which was amalgamated with the Alliance Bank of Simla, Ltd.

(c) Excluding the Russo-Asiatic Bank, information not being available.

(d) Including the Bank of Taiwan which opened a branch in India.

(e) Including the Sumitomo Bank which has a branch in India.

(f) Including the Imperial Bank of Persia, the National Bank of South Africa, the P. & O. Banking Corporation and the Banco Nacional Ultramarino.

(g) Including the Nederlandsche Handel-Maatschappij and the Nederlandsch Indische Handelsbank.

(h) Including the American Express Company Incorporated.

(i) Excluding the National Bank of South Africa but including Thomas Cook & Son (Bankers).

(j) Excluding the Banco Nacional Ultramarino, figures for which are not available.

Note.—1. Where figures for 1942 or 1943 were not available, figures for the previous years have been taken for the purpose of consolidation and are subject to revision.

2. In the case of Deposits and Cash Balances Burma figures excluded for the years 1942 and 1943.

limited the bank's rate of interest to a maximum of 12 per cent. The power of note issue, however, was not given to the bank till 1823. In 1839 the bank was given the power to open branches, and to deal in inland exchange. The two other Presidency Banks, *viz.*, the Bank of Bombay, and the Bank of Madras were established in 1840 and 1843 respectively. The former had a share capital of Rs. 52,25,000 and the latter Rs. 30 lakhs, Government subscribing Rs. 3 lakhs in each case. As the notes issued by the Presidency Bank did not become popular, they were replaced by Government paper money in 1862.

THE PRINCIPLE OF LIMITED LIABILITY—The year 1860 marks a new era in the history of public banks in India, because it was in this year, that the principle of limited liability was first applied to joint stock banks. So far, little or no banking legislation existed in India. Many banks had sprung up like mushrooms and failed, mostly due to speculation, mismanagement and fraud, on the part of those responsible for their flotation, organization, and management.

THE CRISIS OF 1862-65—It was unfortunate for India that the crisis of 1862-1865 should have come so soon after the introduction of this important banking legislation. India's cotton exports increased by leaps and bounds, because, as a result of the outbreak of the civil war in the United States of America, the supply of American cotton to Lancashire being cut off, the English cotton importers had to look to India, as their main source of supply. This brought immense wealth in precious metals to India, which led, among other speculative enterprises, to the flotation of banks, soon to be overtaken by disasters. Among several others, the Bank of Bombay originally established in 1840 went into liquidation in 1868, and was restarted the same year with the same name. The failure of almost all these mushroom growths prejudiced the Indian, who is by nature a conservative, against banks run on modern lines. Between 1865 and 1870 only one bank, the Allahabad Bank Ltd., was established.

FALL IN THE GOLD PRICE OF SILVER—But that was not all. The fall in the gold price of silver almost synchronized with the disaster, without allowing any time to the Indian indigenous banker to recover from the panic. India, being then on the silver standard, every fall in the value of silver lowered the gold value of the rupee, and added to the burden of the Indian Government, who had to find more rupees to meet the Home Charges in London. Again, every alteration in the rupee-sterling rate of exchange also increased the element of uncertainty in the foreign trade of India and affected her industries. Normality was not restored till after 1893 when the Indian mints were closed to the free coinage of silver. The slow growth of joint stock banking, till that year, may partially be attributed to the currency troubles of India. The only important bank started shortly after the closing of the mints was the Punjab National Bank Ltd., which was registered in 1895 with its head office at Lahore.

THE SWADESHI MOVEMENT AND CREATION OF NEW BANKS—Thanks to the Swadeshi movement, which prompted Indians to start many new institutions, the number of joint stock banks increased remarkably during the boom of 1906-13. The Peoples Bank of India Ltd., The Bank of India Ltd., The Central Bank of India Ltd., and The Bank of Baroda Ltd., were started during this period. The boom continued till it was overtaken by the crash of 1913-17, the most severe crisis that the Indian Joint Stock Banks have so far experienced.

AMALGAMATION OF THE PRESIDENCY BANKS INTO THE IMPERIAL BANK OF INDIA—The Presidency Banks, referred to above, were amalgamated into the Imperial Bank of India, which was brought into existence on the 27th January, 1921, by the Imperial Bank of India Act of 1920. The Act, however, gave the Bank no power to issue notes and thus left it without control over currency of the country.

ESTABLISHMENT OF THE RESERVE BANK OF INDIA—The Reserve Bank of India was established on the 1st April, 1935, as a result of the passing of the Reserve Bank of India Act, 1934. Although suggestions had from time to time been made that India ought to have a central bank they did not take a definite shape until 1926, when the Royal Commission on Indian Currency and Finance recommended that a central bank should be started in India so as to perfect her credit and currency organization. The Commission was not in favour of converting the Imperial Bank into a central bank. A bill to give effect to the recommendation was introduced in the Legislative Assembly on the 25th January, 1927, but was dropped for constitutional reasons. The proposal assumed importance again in connection with the Constitutional Reforms and a fresh bill was accordingly introduced by Sir George Schuster in September, 1933. It was enacted in due course and became law on the 6th March, 1934 (for a detailed account of the functions and works of the Reserve Bank of India, please see a neat little booklet published by the Bank).

REASONS FOR THE POPULARITY OF JOINT STOCK BANKS—In spite of the fact, that it received no encouragement in its infancy from the Government and the severe crisis it had to face, the Indian Joint Stock Bank has come to stay. With the growth of commerce, private banking is gradually disappearing and joint stock banking is making steady progress as will be seen from the statements given on the preceding pages.

Gigantic enterprises, in the fields of industry and commerce, quite naturally stimulate public confidence and this, together with the publicity, which banks are required to give to their accounts, goes a long way towards safeguarding the interests of their depositors. No individual whims, except in rare cases, can alter the direction in which the money of the depositors has to be invested. Generally there is a competent body of directors, whose activities are invariably open to criticism at any stage. Elimination of the old factors of custom, and expanded spheres of activity, have naturally put a stop to the high charges for inland exchange, which, on account of the increasing use of currency notes and the establishment of branch banks, are fast disappearing. Public banks have also been responsible for lowering the rates of interest, by attracting deposits and encouraging the use of cheque currency. They have equally facilitated the making of payment.

Laissez faire POLICY IN BANKING—It is to be regretted that, in spite of their utility and service to the public, these banks received practically no help from the Government, on account of its *laissez faire* policy in banking and commercial matters. Even the severe banking crisis, just before the War of 1914-1918 which was responsible for the failure of no less than 54 banks between November, 1913 and December, 1914 and the failure of 154 banks, between 1915 and 1927 (the latter year accounting for sixteen of these) does not seem to have affected the policy of the Government. A large number of these failures can be attributed to mismanagement and frauds, and it is, therefore, necessary that the repetition of these failures should, as far as possible, be prevented by means of banking legislation, which can place a check on the dishonesty of directors and managers, and make embezzlement difficult, if not impossible.

Pros and cons of banking legislation—Elaborate banking legislation on the other hand, according to some, may do more harm than good, and thus retard the progress of joint stock banking in India. At the same time, there is no denying the fact, that the Indian law relating to companies until lately was unsatisfactory, particularly in regard to banking companies. The two ways in which this state of law governing the subject of banking could be remedied, were (1) the promulgation of a special Bank Act embodying the necessary provisions, governing all banking institutions, and (2) the amendment of, and additions to, the provisions contained in the Indian Companies Act, 1913, so as to provide for the matters, which are peculiar to the subject of banking, and which require to be dealt with by legislation. The Indian Central Banking Enquiry Committee decided in favour of the former, as, in its opinion, it would have enabled the Legislature to deal with the subject more comprehensively and provide the public with a complete code on the subject

Need for legislation—The Government, however, adopted the second of the two courses stated above, and added a Part to the Indian Companies Act, 1913, dealing with subjects pertaining to banks exclusively. The reason for this course, as stated by the Law Member of the Government, was, that there was no immediate prospect of legislation, dealing solely with the subject of banking, being undertaken. The Government appeared to follow the "let alone" policy, possibly because it obtains in England, but there is no reason why the same may be considered as fitting to India also, especially when it is realized that joint stock banking in England is a century old, whereas, in India, it is still in its infancy. In no two ages and in no two countries, not even in England and Scotland, has the development of banking proceeded on exactly the same or stereotyped lines.

It is gratifying to record here the part played by the Reserve Bank of India in the field of banking legislation. In November 1939, the Bank submitted a series of proposals, drafted in the form of a bank bill, to the Central Government who circulated the proposals for eliciting public opinion. The limited object of these proposals was to secure a net work of properly managed and financially sound banking institutions which would enable the Bank to co-ordinate the credit structure of the country and more fully utilise the powers of extending credit provided for under the Reserve Bank Act. The broad features of the proposals are as follows. They sought firstly to achieve a simpler definition of 'banking' than the one given in Section 277F of the Indian Companies Act, and to remedy the anomaly arising from Section 277G (1) of that Act under which institutions incorporated prior to the 15th January 1937, might call themselves banks and yet refuse to comply with the statutory provisions relating to banking companies. Secondly the bill sought to ensure the maintenance by banking companies of a minimum amount of capital, and also of certain proportions between their authorised, subscribed and paid-up capital. Besides seeking to impose moderate restrictions on bank investments and also for protecting British Indian depositors in the case of banks incorporated outside British India. The bill also sought to provide for a simplified procedure for the liquidation of banking companies.

The Government of India, owing to their pre-occupation with the war, decided that the question of comprehensive legislation thus proposed should be held over for some time. Interim measures, however, were taken up from time to time, involving a minimum of legislation and were embodied in the form of amendments to the existing provisions relating to banking, i.e. Part XA of

the Indian Companies Act. The first of such measures related to a proposal made by the Reserve Bank to amend Section 277F of the Act relating to the definition of a banking company by the insertion of a proviso to the effect that any company which uses the word 'bank', 'banker', or 'banking' as part of its name shall be deemed to be a banking company irrespective of whether the business of accepting deposits of money on current account or otherwise subject to withdrawal by cheque, draft or order was its principal business or not. The amending bill embodying this proposal received the Governor-General's assent in October 1942 and came into force on the 1st of November 1942. In March 1944 again, further amendments to Sections 277H and 277I of the Indian Companies Act were made on the recommendation of the Reserve Bank. The object of these proposals was to remove certain undesirable features noticed in the capital structure and management of banking companies particularly those floated since the outbreak of the war. According to the amended Act which came into force on the 1st July 1944, a bank is prohibited from employing a managing agent or any other person whose remuneration, whole or part, takes the form of a commission or a share in the profits of the company, or any person having a contract with the company for its management for a period exceeding five years at a time. The amended Act further requires in respect of banking companies incorporated before 15th January 1937 (1) that the subscribed capital shall not be less than half of the authorised capital and that the paid-up capital shall not be less than half of the subscribed capital, (2) that the capital should consist of ordinary shares only or ordinary and such preference shares as may have been issued before the 1st July 1944, and (3) that the voting rights of all shareholders should be strictly in proportion to the contribution made by the shareholder to the paid up capital of the company.

While these interim measures have already been put into the statute book in the form of amendments to the Indian Companies Act, the recent trends in the development of banking lent urgency to the question of a separate Bank Act. Accordingly the proposals for comprehensive legislation originally made by the Reserve Bank referred to above, were reviewed by the Bank in the light of public opinion since received and the bill embodying the revised proposals, was introduced in the Assembly in October 1944; it was then circulated to the public to elicit criticism and has now been referred to a Select Committtee.

Besides the existing provisions relating to banking companies in the Indian Companies Act, including the interim measures referred to above, the draft bill proposes to secure :—

1. A simple definition of banking
2. Prohibition of trading with a view to eliminating non-banking risks.
3. Inclusion in the scope of legislation of banks incorporated outside British India
4. Provision for an expeditious procedure for liquidation.
5. Inspection of the books and accounts of a bank by the Reserve Bank when necessary.
6. Empowering the Central Government to take action against bank conducting their affairs in a manner detrimental to the interests of depositors.
7. Prescription of a special form of balance sheet and conferring of powers on the Reserve Bank to call for periodical returns.

8. Provision for maintenance of a percentage of assets in liquid form and submission of returns to the Reserve Bank of India.

9. Restriction of branch banking based on the capital of a bank and the place at which the bank is operated.

THE PRESENT LAWS FOR BANKS IN INDIA-- Until the passing of the Indian Companies Amendment Act, 1936, the banks in India were governed by the Indian Companies Act, 1913, some sections of which required certain conditions to be fulfilled by the banks concerning the issue of half-yearly statements of affairs, their exhibition in all of their offices, the form of their balance sheets, etc But there was no specific provision for the proper organization, efficient management, and reasonable supervision of the business of banks. Nor were they protected against malicious misrepresentations of their affairs by interested critics. The Amendments have, no doubt, made provisions to regulate some of these matters. The Imperial Bank of India is governed by a special Act, some provisions of which imposed certain restrictions on the activities of the bank, having regard to the fact that it was entrusted with the management of Government funds. Some of the restrictions have since been removed by the Imperial Bank of India (Amendment) Act (III of 1934) as a consequence of the passing of the Reserve Bank of India Act (II of 1934). Under the Indian Companies Act, 1913, foreign Exchange Banks were not required to comply with the general provisions of the said Act. By section 118 of the Indian Companies Amendment Act several modifications have been introduced so far as foreign companies are concerned. Moreover, as regards balance sheets the amended section 277 does away with the discretion formerly given to the Governor General in Council to exempt any particular foreign company from complying with the provisions of section 277 and a new form (H) has been provided for these companies.

BANKS AND THEIR STAFF- Most of the leading Indian Joint Stock Banks are at present under the management of non-Indians. The mere introduction of the occidental system of banking is not enough. The chief aim of a sound and well developed banking organization should be to help in the development of the commercial and industrial activities of the country. This service, it will be readily admitted ,can best be rendered by a bank, if the management has a predominant element of the sons of the soil, who are generally acquainted with the needs of the country, and who are naturally more interested in the development of its commercial and industrial resources than others. Absence of Indians, well-trained in banking, has been decidedly one of the main factors responsible for the slow development of branch banking in India, because exchange banks could not open branches even in comparatively large cities, owing to their inability to bear the cost of a highly paid superior staff, which used to be recruited from abroad. The growth of branch banking has also, to a certain extent, been retarded on account of the fact that some of the European managers of branches, being ignorant of the vernaculars used in business at certain places in India as well as of the social customs of her people, could not establish the requisite contact with their would-be customers. As the branches of Indian banks in comparatively small centres are being placed under competent Indians, it encourages people to do more business with joint stock banks, and thus increase their business while their expenses are being kept at a low level.

INDIANIZATION OF STAFF—Up till recently the plea put forth for the recruitment of foreign staff was the lack of trained Indians. But with the

advance of time, commercial education, in India, has been progressing rapidly even to the point of producing a state of unemployment among those who have received such education. Moreover, the Indian Institute of Bankers has been encouraging the training of bank employees, in India, by providing course of lectures on banking and allied subjects and holding examinations in different parts of the country. It is, therefore, contended that there is hardly any justification for the recruitment of non-Indians for banks in India, except in case of appointments requiring long experience or exceptional qualifications. It must, however, be admitted, that the smallness of the number of educated Indians on the staff of banks is also due to the fact, that, until recently, the educated Indians were keen either on government service, or professions such as law and medicine. In this connection, it is gratifying to note the appointment of Sir Chintaman Deshmukh as the first Indian Governor of the Reserve Bank of India. A few of the staff officers of the Imperial Bank of India are now being recruited from the assistants trained in the bank under the Probationer's Scheme. Similarly, other banks, except some of the older exchange banks, have begun to give some encouragement to the Indian members of their staff.

The very small number of properly trained Indians has in the last two years during which several big Indian Banks have been started led to the very high salaries being offered to them possessing practical banking experience to join new banks.

PRACTICE AND LAW AT VARIANCE.—As a result of the fact that our banks have largely been manned by European staff, there has been a certain amount of variance between the law and the practice of banking. The British bank staff, having studied the British banking law, have, in the past, generally taken for granted that the same law was applicable to this country. The anomaly was brought home to them by a ruling of the Bombay High Court (*Dossabhai* v. *Virchand*, 21 Bom. L. R. 1) where the point involved was, whether striking off the word "bearer" from a cheque, without adding the word "order", amounted to a restriction on the rights of the payee to negotiate it. Although evidence was given to prove that the bankers, in Bombay, as in England, treated such cheques as order cheques, the learned judge held that the law of this country, as it stood then, did not allow it, and, therefore, such cheques were not negotiable. Thanks to the efforts of the late Mr. V. J. Patel, the Negotiable Instruments Amendment Act, 1919, removed this incongruity between banking law and practice in India.

Similarly, although, in England, the protection given to the collecting banker was extended to crossed cheques credited, though not collected, as far back as 1906 by the passing of the Bills of Exchange (Crossed Cheques) Act it was neither asked for by, nor given to, bankers in this country, until the matter was brought to the notice of the Government of India by the present writer, and the law was accordingly amended.

Evolution of Banking In the West.

ORIGIN OF THE WORD "BANK".—According to some authorities, the word "bank" itself is derived from the words "banco" "bancus" or "banque" a bench. The early bankers, the Jews in Lombardy, transacted their business at benches in the market place. When a banker failed, his "banco" was broken up by the people, whence the word "bankrupt". This etymology is, however, ridiculed by Macleod on the ground that "The Italian money changers

as such were never called Banchieri in the Middle Ages". There are others, who are of opinion that the word "bank" is originally derived from the German word "back" meaning a joint stock fund, which was Italianized into "banco" when the Germans were masters of a great part of Italy. But "whatever be the origin of the word 'bank'," as Professor Ramchandra Rao says (Present-day Banking in India, 1st edition, p. 88) "it would trace the history of banking in Europe from the Middle Ages."

EARLY HISTORY OF BANKING—As early as 2,000 B.C., the Babylonians had developed a system of banks. There is evidence to show that the temples of Babylon were used as banks, and such great temples as those of Ephesus and of Delphi were the most powerful of the Greek banking institutions. But the spread of irreligion soon destroyed the public sense of security in depositing money and valuables in the temples, and the priests were no longer acting as financial agents. The Romans did not organize State Banks as did the Greeks, but their minute regulations, as to the conduct of private banking, were calculated to create the utmost confidence in it. With the end of the civilization of antiquity, and as a result of the administrative decentralization and demoralisation of the Government authority, with its inevitable counterpart of commercial insecurity, banking degenerated, for a period of some centuries, into a system of financial makeshifts. But that was not the only cause. Old prejudices die hard, and Aristotle's dictum, that the charging of interest was unnatural and consequently immoral, was adhered to fanatically, as even now some Mohammadans, in obedience to the commands contained in that behalf in their religious books refuse to accept interest on money loans. The followers of Aristotle's dictum quite forgot that the ancient world, the Hebrews included, although it had no system of banks that would be considered adequate from the modern point of view, had maintained money-lenders and made no sin of interest, but only of usury. However, upon the revival of civilization, growing necessity forced the issue in the middle of the 12th century, and banks were established at Venice and Genoa, though in fact they did not become banks as we understand them, till long after. Again the origin of modern banking may be traced to the money dealers in Florence, who received money on deposit, and were lenders of money in the 14th century, and the names of the Bardi, Acciajuoli, Peruzzi, Pitti and Medici soon became famous throughout Europe, as bankers. At one time, Florence is said to have had eighty bankers, though it could boast of no public bank.

The Development of British Banking.

ROYAL EXCHANGER.—In England, we find that during the reign of Edward III, money changing—an important function of the bankers of those days—was taken up by a Royal Exchanger for the benefit of the Crown. He exchanged the various foreign coins tendered to him by travellers and merchants entering the kingdom, into British money, and, on the other hand, supplied persons going out of the country with the foreign money they required.

THE GOLDSMITHS It is probably true to say that the ground was prepared for modern banking in England, by the influx of gold from America in the Elizabethan Age and the simultaneous birth of foreign trade. Land ceased to be the only form of wealth, and the country gentleman, and the town merchant, began to hold part of their "capital" in cash. Impetus was given to public banking by the seizure, by Charles I in 1640, of £130,000 in bullion left by the city merchants at the Royal Mint. As a result of this Royal repu-

diation the merchants began to entrust their cashiers with large sums, but the latter misappropriated their masters' money for their own benefit. Finding that their employees had not treated them better than their king, the city merchants decided to keep their cash with the goldsmiths, who in those days had strong rooms and employed watchmen.

EARLY BEGINNING OF "ISSUE" AND "DEPOSIT" BANKING—Thus, large sums of money were left with the goldsmiths for safe custody against signed receipt, known as "goldsmiths' notes", embodying an undertaking to return the money to the depositor or to bearer on demand. Two developments quickly followed, which were the foundation of "issue" and "deposit" banking respectively. The first was that the goldsmiths' note became payable to bearer, and so was transformed from a receipt to a bank note. It was payable on demand and enjoyed considerable circulation. Secondly, the goldsmiths gradually discovered that large sums of money were left in their keeping for long periods, and following the example of Dutch bankers, they thought it safe and profitable to lend out a part of their customers' money, provided such loans were repaid within the fixed time. Further, realizing that the business of loaning of other peoples' money at interest was profitable, and in order to attract larger amounts, the more enterprising of the goldsmiths began to offer interest on money deposited with them, instead of charging a fee for their services in guarding their clients' gold. This marks an important step in the development of banking in that country. Business grew to such an extent that it soon became clear that a goldsmith could always spare a certain proportion of his cash for loans, regardless of the date at which his notes fell due. It equally, became safe for him to make his notes payable at any time, for so long as his credit remained good, he could calculate, on the law of averages, the amount of gold he needed to meet the daily claims of his note holders and depositors.

"CURRENT ACCOUNT"—It was in 1672, that this development of English banking received a rude set-back. Charles II borrowed heavily from the goldsmiths and, promptly like his father before him, repudiated his debts. This caused a general suspension of payment. Confidence, however, was restored in spite of the shock and the general belief, which it produced among people, that the goldsmiths were guilty of imprudence and exorbitant practices. It was soon after this date that the goldsmiths found that they could receive money on what is now termed "current account", *i.e.*, money withdrawable without notice.

The Bank of England.

THE TONNAGE ACT—The Bank of England was started in 1694, largely as a result of the financial difficulties of William III, who was carrying on a war with France. The public distrust of goldsmiths was also responsible. One, Mr. Patterson, suggested a way out of the difficulties by offering to raise £1,200,000 and by lending the money to the Government, if certain concessions, particularly the right to issue notes, were given to the proposed institutions. The Government agreed to the terms offered by Mr. Patterson, and an Act called the "Tonnage Act" was passed. The main provisions of the Act were as follows:—

(1) It authorized the raising of £1,200,000 by subscription, the subscribers forming a corporation to be called "The Governor and Company of the Bank of England."

(2) No person could subscribe more than £10,000 before the first of July following, and even after that date, no one could subscribe more than £20,000 in all.

(3) The Corporation was to lend the whole of its capital to the Government and in return it was to be paid interest at the rate of 8 per cent. and £4,000 for expenses of management.

(4) The Corporation was to have the privileges of a bank for twelve years, then the Government reserved the right of annulling the Charter after giving one year's notice to the company.

(5) The company were forbidden to trade in any merchandise whatever, but they were allowed to deal in bills of exchange, gold or silver bullion, and to sell any wares or merchandise upon which they had advanced money . . . .

The new bank was a formidable competitor to the comparatively small private banking firms, which had grown up from the London goldsmiths, and to the country banks, such as the Smiths of Nottingham.

MONOPOLY OF THE NOTE ISSUE—The year 1708 witnessed the passing of an important Act, which prohibited any other bank, with more than six partners, issuing promissory notes, *i.e.*, bank notes. The most important clause of this banking legislation ran as follows:—"That during the continuance of the said Corporation of the Governor and the Company of the Bank of England, it shall not be lawful for any body, politic or corporate, whatsoever created, or to be created other than the said Governor and Company of the Bank of England, or for other persons whatsoever united or to be united, in covenants or partnerships, *Exceeding the Number of Six* persons, in that part of Great Britain called England, to borrow, owe or take up any sums of money on their bills or notes payable on demand, or at less time than six months from the borrowing thereof."

LIMITED CIRCULATION OF BANK OF ENGLAND NOTES—This Act, as is evident, gave a monopoly of note issue to the Bank of England so far as *Joint Stock Banks* were concerned, but left private banks having not more than six partners free to issue notes. In London and the surrounding districts, the notes of the private banks did not circulate to any appreciable extent; consequently they abandoned the issue of notes and began to develop *deposit banking*. They received deposits, which were at first withdrawable by letters, and later by cheques. Printed cheque forms were first issued between 1749 and 1759. However, the Bank of England note was supreme, but as the Bank of England did not have any outside branch, its notes were not popular beyond the metropolis. Private banks in the provincial cities begun to play an important part after the middle of the eighteenth century, and their number continued to grow up till it reached over 300, about the end of the century.

RESTRICTION ON THE MONOPOLY—The crisis of 1825 marked a turning point, and tolled the death knell of the small country bank and of the note as the foundation of the banking system. Legislation quickly followed. It was realized that joint stock banks with the right of note issue should be started outside London, and, therefore, in 1826 an Act was passed which allowed banks to be started with unlimited liability, consisting of more than six partners, with the right to issue notes, provided they had no office within a radius of 65 miles from London. This led to the starting of the joint stock banks in the country,

as even at that time the monopoly of note issue given to the Bank of England by the Act of 1708 was interpreted to mean monopoly of joint stock banking in London, probably because, in those days, the note issue was considered to be the most important as well as the most paying function of banks.

JOINT-STOCK BANKING INVADES LONDON.—However, the wrong impression, that no joint stock bank could be started in London, was removed by a gentleman named Mr. Joplin, who after studying carefully the provisions of the various Charters of the Bank of England, came to the conclusion that no such monopoly was intended. Opportunity was taken on the occasion of the renewal of the Bank's Charter in 1833, to clarify the position by the inclusion, in the new Charter of the Bank, of a clause giving legislative sanction to the establishment of joint stock banks in London,..........and in 1834, the London and Westminster Bank was started in London, being the first of the "Big Five". The Bank of England naturally did not receive the intruders, as it then took them to be, with a becoming grace.

PEEL'S ACT OF 1844.—There was at that time no limit to the issue of notes, which private bankers, and after 1826 the country joint stock banks, were allowed to issue, and this resulted in numerous banking crises and bank failures. In 1844 another important stage was reached in the development of English banking when, by Peel's Act of that year, the right to issue notes in England was restricted to the banks then issuing notes in that country, thus providing for the gradual extinction of the right, and laying the foundations of the monopoly of bank-note issue for the Bank of England. This marks an important turning point in the history and development of English banking, in that deposit banking eventually came to supplant issue banking.

GROWTH OF DEPOSIT BANKING AND CHEQUE CURRENCY.—After the passing of the Act of 1844, new banks with the right to issue notes could not be started and those allowed to issue notes could not increase their circulation. Thus greater attention began to be paid towards deposit banking and cheque currency. It was soon realized that cheque currency was almost as profitable as the issue of bank-notes, and thus gradually these activities grew more and more important, with the result that many new banks were started for this business during the second half of the last century. After 1890 the movement in favour of bank amalgamation and absorption made its appearance, and we find that the number of joint stock banks, in England and Wales, came down from 104 in 1890 to only 16 in 1937, although the number of banking offices has shot up from 2,203 to 10,102.

Services of Banks.

MODERN COMMERCE AND BANKING.—From what has been said about the evolution of banking, it must be clear to the reader, that the taking care of other people's money and lending a part of it were the chief banking functions of the goldsmiths. Gradually these functions were extended and others were added. Some people believe that the dependence of commerce upon banking has become so great that the cessation, even for a day or two, of the banker's activities, would completely paralyse the economic life of a nation.

EVER EXPANDING SPHERE OF BANK ACTIVITIES.—Bankers have, nowadays, to deal with a large number of matters. They serve as custodians of stocks and shares, and other valuables. Imports into and exports out of a country are financed by banks and documents relating to the goods so imported and

exported, at one time or another pass through the hands of bankers. Thus, they have to deal not only with Bills of Exchange, but with bills of lading, railway receipts, warehouse warrants, marine insurance policies and various other documents. As bankers, they advance money on securities, and they issue letters of credit or travellers' cheques to customers wishing to travel abroad, as also to effect purchases and shipment of goods. They are often required to countersign indemnities and guarantees given by their customers, and they undertake the administration of estates, thus assuming the position of trustees; they assist industrial undertakings by underwriting their debentures and shares and occasionally finance the purchase of real property. They sometimes even obtain passports for their customers, and deal with their in-coming letters. On behalf of their customers, they carry on correspondence with income-tax authorities, make periodical payments such as rents, taxes, subscriptions, etc. and on instructions from their customers act as executors of their customers' wills: in short, they do all they can to assist their customers. The more highly developed a country is, the more is the instrumentality of the banker utilized to carry through commercial transactions. From its original narrow scope and modest purpose, banking has developed to such an extent that it can truly be said, that in countries such as England and the United States of America, there is hardly one business deal in which the assistance in one form or another of a bank is not sought.

The Business of Different Types of Banks.

THE ENGLISH TRADITIONS OF BANKING English banks, as a rule, are engaged in such business as the handling of current and deposit accounts, financing trade and industry by discounting bills, opening of credits, and in many similar ways; whilst, on the other hand, there has been a tendency, specially on the part of certain continental banks, to specialize in one or more of these activities. Thus, there are the savings banks, the scope of which is very much limited. In agricultural countries, there are invariably land mortgage banks, which mainly engage in giving long term credit required for financing the purchase of real property as well as improvements of land. In certain industrial countries, banks, in addition to their ordinary banking business, specialize in the financing of certain industries by means of buying and marketing their shares and debentures and helping them in other ways.

ISSUING AND DISCOUNT HOUSES DIFFERENTIATED FROM BANKS—This development of banking business is by no means countenanced or encouraged by the more conservative school as represented by the English Joint-Stock Banks, and business of that description is left to institutions specializing in it. At the same time, such business can properly be described as banking business although it does not come under the category of commercial banking. Technically speaking, issuing houses which take up and guide the destinies of Government, corporations and industrial capital flotations, are classed under the generic term of bankers. The same may be said of the discounting houses or bill brokers, though, to a visitor to any one of the great discounting houses of the city of London, there would appear to be a considerable difference between the common conception of banking houses, and the visible activities and operations of discounting establishments.

The Functions of Commercial Banks.

NOT MERE DEPOSITORIES—A bank is usually thought of as a reliable agency with which money is deposited. The idea is wanting in precision.

Banks do receive valuables for safe custody and undertake to return them, but that is only a subsidiary function. Usually it is jewellery, deeds, securities and similar articles, which are given as safe custody deposits. But the services rendered by a bank either as depository or as trustee are by no means of very great importance. In very general terms, however, the functions of a commercial bank can be classified under the following main heads :

I. Receiving of money on deposit :

This is, perhaps, the most important function of almost all modern banks, as it is largely by means of deposits that a bank prepares the basis for several other activities. The money power of a bank, by which it helps largely the business community, depends considerably upon the amounts it can borrow by way of deposits, which may be in the form of fixed, savings bank, or current deposits. All these go towards the increase of its resources. The money received on fixed deposits can be used without any risk of withdrawal, before the due date, and, in the case of savings bank deposits, a bank can use a very large part of them, as generally the demands of customers having such deposits are comparatively small, on account of restrictions placed as to the amount to be withdrawn, and the number of withdrawals to be made within a week. By the opening of current accounts, a bank not only obtains funds, but also provides its clients with deposit currency, which is both more convenient and more economical than other forms of currency. By taking money on deposit, the bank provides safe keeping for people's money. But the money is not set apart in a strong room. It is replaced by a debt due from a banker who ordinarily pays interest so long as the money is retained by him as a deposit. The principal together with interest is returned on its being claimed in accordance with the contract.

II. Issuing of notes :

This function, which was once considered to be the most paying part of a banker's business, is in modern times performed generally by the central banking institution in most of the leading countries of the world. Its importance to banks in general has dwindled in some of the important countries, as which the cheque currency has replaced bank-notes to a large extent. For instance, in England and in the United States of America, the part which is played by bank-notes is becoming more and more insignificant, although they are still very popular in certain European countries such as France and Germany, where serious efforts are being made to popularize the use of cheques as means of payment.

III. Lending of Money :

This function is not only very important, but is also the chief source of profit to most of the banks. When a bank agrees to discount a bill, or gives funds in exchange for a promissory note, the transaction is known either as a discount or a loan. In either case the bank agrees to place funds at the disposal of the borrower, in exchange for a promise of payment at a future date. Thus, it enables those who find their own capital insufficient for carrying on business on a large scale, to do so with the help of the funds borrowed from a bank, and thus use their capital more profitably than they could otherwise do. A bank, therefore, is liable to help not only merchants but others who, in turn, may use funds not only to their advantage but also to the advantage of the interests of the country.

IV. Transferring money from place to place:–

Modern banks are, generally, in a position to remit money, from one place or country to another, by means of drafts drawn upon their branches or agents. They can, also, by purchasing bills of exchange, enable merchants and others to receive money from their debtors, in other cities or countries. These facilities have helped not only the internal trade of different countries, but also the international commerce. It must be evident that the great strides which have been made by trade and commerce, which, in turn, have been to a large extent responsible for the industrial development of different parts of the world would have been an impossibility but for the facilities in exchange provided by banks.

Miscellaneous Functions.

In addition to the main functions given above, modern banks perform miscellaneous services such as (1) the issue of various forms of credits, *e.g.*, letters of credit, travellers cheques and circular notes; (2) the acceptance of bills of exchange, whereby the banker lends his name to his customers in return for a commission, (3) the safe custody of valuables, (4) and acting as executors and trustees for customers.

The Meaning of Banking Law.

NO COMPREHENSIVE BANKING CODE.–There is no separate code of law which applies to the banking business, as distinguished from other kinds of business. A banker is subject to the same general principles of law as apply to persons engaged in other fields of business. The law of contract applies to all contracts, whether or not a banker is a party to them. Similarly, the law of torts and other branches of civil as well as criminal law make no distinction between persons who are bankers and those who are not. However, certain branches of law, such as the law relating to the negotiable instruments, are of greater interest to bankers than to other persons, as such instruments play a far more important part in the banking business, than they do in other kinds of business. There are only a few sections of the Negotiable Instruments Act, 1881, as well as of the Indian Companies Act, 1913, and more particularly those of the Indian Companies Amendment Acts, 1936 and 1942, which distinguish between bankers and non-bankers. The only important piece of legislation, which is meant for bankers alone in this country, is the Bankers' Books Evidence Act, 1891, under which a banker is allowed to produce in courts certified copies of accounts or entries in his books, whereas, others are required to produce their account books in original. (Section 5 of the Bankers' Books Evidence Act, 1891) Attention may, however, be drawn to a judgment (*A. F. G. Price v. Emperor*, Criminal Revision No. 1526 of 1935 decided on 11th January, 1936) of the Lahore High Court, according to which, bankers must produce their books before the police, if the latter deem the production of such books necessary for the purposes of police investigation. The point at issue was, whether the exemption from producing their books granted to Bankers, under section 5 of the Bankers' Books Evidence Act of 1891, in any legal proceedings to which a bank is not a party, held good also in case of a police investigation. That it did not was the opinion of Skemp J. in the case cited above as, according to the learned judge, it was not the intention of the Legislature to exempt banks from the operation of section 94 of the Indian Criminal Procedure Code under which any officer in charge of a police station, beyond the limits of the towns of

Calcutta and Bombay, can, by a written order, call upon a person to produce any documents in his possession which the police officer thinks relevant to the investigation he is carrying on. In short, the judgment lays down that a police investigation is not a legal proceeding in the sense in which the term is employed in section 5 of the Bankers' Books Evidence Act and to which alone the exemption granted under the said section applies, on the ground that a police investigation has nothing to do with "evidence", in its legal sense, which is the essence of a legal proceeding. Reference has been made to this judgment at length, because it definitely curtails the protection granted to bankers under the Bankers' Books Evidence Act, and relying on which an official of the Imperial Bank of India at Lahore refused to comply with the orders of a police officer, who successfully took action against the Bank in the present case and whose point of view was upheld by the Lahore High Court.

We would like to remark, with all respect to the learned judge who gave the above ruling, that his decision strikes at the very root of the principles on which the Bankers' Books Evidence Act is based and the protection granted under it to bankers in India. The basic idea underlying the said Act would appear to be not to inconvenience banks, in the interests of the public, and it is with this view that exemption from production of bankers' books is granted, and to permit police officers to require bankers to produce any documents they need for their investigations is to defeat or negative the very object of the Act. We therefore suggest that, as in the case of a legal proceeding, the power of a police officer to call upon bankers to produce documents should be limited to certified copies of accounts or entries in their books or in other words the exemption granted to bankers in legal proceedings under s. 5 of the Bankers' Books Evidence Act should also equally hold good in case of police investigations. In England there is no compulsion on a banker to disclose to a police officer who may require (Bankers' Insurance Managers and Agents Magazine June 1939 p. 987) information regarding a customer. The law should be amended if necessary so as to exempt bankers from producing books in police investigations also in places other than Bombay and Calcutta. This exceptional or preferential treatment to the banker is necessary on the ground that it is impossible for him to carry on his business, if his account books are required to be [illegible] frequently [illegible]. [illegible] will be clear that the term "banking" [illegible] part [illegible] law as govern the banking [illegible]

Evolution of Banking Law.

In England.—Before considering the principles of law which apply to banking, it is necessary to sketch briefly the evolution of banking law. It may be stated that Indian banking law is based to a very large extent though [illegible] upon the English banking law; it is, therefore, necessary to pass in review the main landmarks of the history of banking legislation in England.

Law Merchant.—Banking law in general is a part of the law merchant, or as it is sometimes known, Lex Mercatoria. Lex Mercatoria began to take its shape in the 13th century, and was based upon the customs of merchants. Gradually these customs were ratified by courts of law, and became a part of the general law, which courts were bound to recognize. No doubt additions were made from time to time. The practice of making bills of exchange payable to order and transferring them by endorsement dates back to the beginning of the 17th century.

LEGISLATION IN THE EIGHTEENTH CENTURY—In 1664, the first Banking Act which brought into existence the Bank of England was passed. However, some people doubt whether the Act should be called as the first piece of banking legislation, because it was a special statute which governed the Bank of England and did not define the laws which were to govern banking business in general. Ten years later, negotiability, which had so far been limited to bills of exchange, was extended to promissory notes as a result of the passing of the Statute 3 and 4 Anne, c. 9 in 1704, and in 1708 an Act was passed to secure monopoly of note issue for the Bank of England by preventing any bank or banking firm having more than six partners from issuing notes. Throughout the whole of the eighteenth century we find very little of banking legislation.

LORD MANSFIELD'S RULING—In the wake of the Industrial Revolution, industries and commerce made rapid strides, and with the emergence of large scale production, expansion of credit became vital to the economic development of the country. During that period banking law was largely judge-made law, which was the outcome of the recognition of certain customs governing banking and commercial practices. Lord Mansfield (for a brief sketch of Lord Mansfield's work, see Journal of the Institute of Bankers, December, 1938, pp. 443-4), whose name is considered perhaps the most important in the history of English mercantile law, tried to lay the foundation of English banking and commercial law upon the customs of merchants of the advanced European countries. Even after his death, the rulings of Lord Mansfield, which were considered the most important and authoritative pieces of judge-made law, continued to be the law on the subject, and later, whenever the law pertaining to banking or commerce was codified, it was based mostly on the rulings or judgments of Lord Mansfield and certain other judges. For instance the, first codification of the law relating to bills of exchange, cheques and notes was made in the year 1882. The Bills of Exchange Act itself was based more or less upon the rulings of Lord Mansfield which were, in turn, based upon the customs and usages prevalent at the time. Thus, it will be easily realized, that banking law is very largely based upon the customs of bankers.

Commercial legislation was first introduced into this country to meet the needs of English merchants who carried on their business largely in Presidency Towns, but who did not like to resort to courts administering indigenous law. It was therefore considered necessary by the English Parliament that mercantile contracts made in India should, as far as possible, be governed by English Mercantile Law. This was first introduced in Presidency Towns, hence the difference between the law of the Presidency Towns and other parts of the country. At first English Commercial Law as well as statute laws were introduced and made applicable to the three Presidency Towns so far as they were applicable to the local conditions, but under the Charter of 1753 such laws were not to be applied to suits and actions between "natives" unless both parties submitted themselves to the jurisdiction of English courts.

ENGLISH LAW APPLIED TO INDIA—Speaking generally, the English law relating to negotiable instruments was applied by courts in India, when the contesting parties were Europeans, but, in the case of the Hindus and Mahomedans, their respective laws and usages were made applicable; where, however, the parties belonged to different communities, the law and usage which governed the defendant were applied. As neither the Hindu texts dealing with hundis, nor the Mahomedan books on the subject, dealt adequately with the matter, customs prevailing among merchants of the respective communities were recognized by the courts. In cases when the hundis were in the form of

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bills of exchange, English law was applicable, though the parties were Hindus or Mahomedans. The Statues 9 and 10 William III, c. 17 providing for the protest of bills of exchange, and 3 and 4 Anne, c. 8 declaring promissory notes negotiable, were in force in India.

ATTEMPTS AT LEGISLATION IN INDIA Act VI of 1840 and Act V of 1866 were of the earliest attempts made in this country to regulate the law relating to bills of exchange and promissory notes. In 1866, the Indian Law Commission drafted a bill to codify the law relating to negotiable instruments. About a year later, the bill was introduced in the Governor-General's Council, which referred it to a committee. However, as it contained many deviations from the English law on which it was supposed to be based, many objections were raised by the merchants, and the bill had to be redrafted by the committee. This draft, having been circulated among the Local Governments, High Courts and principal commercial bodies, was referred to a Select Committee. In 1880 under the orders of the Secretary of State, it was again referred to a new Law Commission, which did not make many alterations, but suggested certain important additions, one of which was to recognize the local usages relating to the hundis. The bill was passed in 1881, a year before the passing of the Bills of Exchange Act in England.

THE INDIAN NEGOTIABLE INSTRUMENTS ACT OF 1881 The Negotiable Instruments Act recognizes local usages and certain customs prevalent among Indian merchants (section 1 of the Negotiable Instruments Act, 1881). It extends to the whole of British India, but does not affect local usages relating to instruments in an oriental language.

Criticism of the Act There is no clear indication in the Act whether the local usage of the place where an instrument is made or of the place of its payment is to apply when the two differ. The question in each case is to be decided probably by a reference to the intention of the parties to the instruments. Sir Henry Chalmer, in his commentary on the Negotiable Instruments Act (4th Edition) has, at page 53, given rules relating to foreign instruments, which may lend useful guidance to the determination of the question. The title of the Negotiable Instruments Act itself is considered misleading, as the Act does not deal with all kinds of negotiable instruments. It is for this reason that the English statute on the same subject, is known as the Bills of Exchange Act. The Negotiable Instruments Act, as the preamble shows, is intended, " to define and amend the law relating to promissory notes, bills of exchange and cheques," whether negotiable or not. Moreover, the Indian Act is not even now as comprehensive as it should be, although it has been amended several times. Since the passing of the Act, the position is as follows: In matters, which are specially dealt with by the provisions of the Act, the courts in British India are not permitted ," to leave the firm ground of the Act and explore the uncertain regions of the law merchant. Such resort would be perfectly legitimate in the construction of the provisions of the Act, which are sometimes of doubtful import " (the Negotiable Instruments Act by Bhashyam and Adiga, 2nd Edition, p. 1[illegible]).

CHAPTER II

BANKER AND CUSTOMER

Definition of Banker.

NO SATISFACTORY DEFINITION. Before examining the relationship between the banker and the customer, it appears necessary to explain, so far as possible, the legal meaning of the two terms. The former, until the passing of the Indian Companies Amendment Act, 1936, had no statutory definition in India, and the legal decisions on its interpretations, were by no means satisfactory. The latter has never been defined in any statute and the Indian judicial decisions on this point also fail to give any guidance.

INTRODUCTORY—Much time, ink, and paper have been consumed in an effort to define what exactly constitutes banking. Even the best authorities have found it rather a hard nut to crack, mostly on account of the multifarious functions and services, *e.g.*, dealings in stocks and shares, trusteeship, executorship, etc., which modern banks perform, in addition to or in conjunction with what is distinctive and characteristic banking business. In most cases, either the term "banker" has been defined in the negative, or in a manner which lays itself open to the charge of *petitio principii*. For instance, section 3 of the Negotiable Instruments Act, 1881, is content with laying down that the term "banker" includes persons, or a corporation, or a company, acting as "bankers":- This is not at all a helpful definition; it is mere tautology. Again those responsible for the drafting of the Bankers' Books Evidence Act (1891), and the Indian Stamp Act (1899), also failed to lay down what exactly was meant by banking business, and what conditions were required to be fulfilled by a person, so as to be regarded as a banker for the purposes of either of these Acts. Even the English law has failed to provide us with satisfactory definitions of the terms "banker" and "customer."

Banking, an evolutionary concept.

THE AMERICAN DEFINITION The term "banker" is often used in a very broad sense, embracing the capitalist, the financier, the stock broker, and even high bank officials. There were many attempts made to explain the exact significance of the term, but nearly all of them had their own pitfalls. The earliest successful attempt was made by legislators in the United States of America, who enacted the following definition:-

> By "banking" we mean the business of dealing in credits and by "a bank" we include every person, firm or company having a place of business where credits are opened by the deposit or collection of money or currency, subject to be paid or remitted on draft, cheque or order, or money is advanced or loaned on stocks bonds, bullion, bills of exchange, or promissory, notes or where stocks, bonds bullion, bills of exchange or promissory notes are received for discount or sale (Indian Finance and Banking, by Findlay Shirras, 2nd impression p. 336).

Criticism. This definition, which is more like a description, is used in an Act of Congress. To define banking merely as "dealing in credit" is wanting in precision and exactitude. Strictly speaking, the term banker should apply to the credit merchant only when he uses the credit and funds of others. He is otherwise more a capitalist than a banker, if he uses only his own credit and

funds. The Japanese Bank Act of March, 1927, which came into effect from 1st January, 1928, defined banks as "institutions" which carry on operations of giving, as well as receiving, credit (Commercial India, November, 1928, p. 452).

In Zurich any person could use the word bank as a part of his name until a Federal Law (8th November 1934) defined a bank as an institution which appeals to the public for deposits.

ENGLISH LAW- There being no statutory definitions in England for these terms, some of the leading writers on banking law, have, from time to time attempted to deduce the essentials in the concept of the terms, from the decided cases. We propose to give the results of their labours below.

HART'S DEFINITION- Dr. Herbert L. Hart, the author of the well-known treatise, Law of Banking, says (p. 1) :—"A banker is one who in the ordinary course of his business, honours cheques drawn upon him by persons from and for whom he receives money on current accounts." This definition is based upon the dicta given in a number of decisions, beginning with *Foley* v. *Hill* (1848), 2 H.L.C. 28. According to this definition, the essential function to enable a person, firm, or institution, to be regarded as a banker or a bank, is that of receiving current deposits against which cheques may be drawn. This view is supported by the following extract from the judgment of Buckley J. in *In re Birkbeck Permanent Benefit Building Society* (1912), 2 Ch. 183

> "It opened current and deposit accounts and in every essential particular I have none, I think I may say, in every particular it did that which a banker does in the ordinary course of banking business and offered its customers all such facilities as a bank usually offers."

CURRENT ACCOUNTS TO BE DRAWN UPON BY CHEQUES. This view appears to have received official support in a certain memorandum, issued by the Ministry of Labour in England, to the effect that the expression "bank" shall be considered so as to include only those institutions where "a substantial part of the business consists in the receipts of money on current account to be drawn upon by cheques" (Banker and Customer, by S. E. Thomas, p. 16).

SIR JOHN PAGET'S DEFINITION- The view expressed above, is further borne out by Sir John Paget, another great authority, according to whom there are four essential functions which persons desiring to be called bankers, must perform.

THE FOUR FUNCTIONS- "It is a fair deduction," says Sir John, "from the *Birbeck Building Society* case (1913), 29 T.L.R., 219, and other legal decisions," "that no person or body, corporate or otherwise, can be a banker who does not (1) take deposit accounts, (2) take current accounts, (3) issue and pay cheques and (4) collect cheques crossed and uncrossed, for his customers" (the Law of Banking, by Sir John Paget (4th Edn.), p. 5). Sir John further adds, that one claiming to be a banker must profess himself to be one, and the public must accept him as such; his main business must be that of banking, from which, generally, he should be able to earn his living. This definition is fairly exhaustive, although it makes no mention of many other important functions of the present day banker, which may be put under two heads, (1) agency services, comprising the collection of bills, promissory notes, coupons, dividends, payment of subscriptions and insurance premiums, and acting as a trustee, attorney or executor of his customers, and (2) general utility services, *e.g.*, issue of credit instruments, the transaction of foreign exchange business, the

safeguarding of valuables and documents against fire, theft, etc. There seems to be no doubt that, according to English law, a person claiming to be treated as a banker, should perform the functions as given by Sir John.

MONEY-LENDERS NOT BANKERS.—In India, there is no restriction imposed on the use of the term " bank " or " bankers " by money-lenders. In England, under the provisions of the English Money-Lenders Act, 1900, and the Money Lenders Act, 1911, all money-lenders are required to be registered, and no person can be registered as a money-lender under a name which includes the word bank, or implies that such a person carries on banking business. In case he makes a false or misleading statement, or holds himself out as a banker, he is liable to a maximum penalty of imprisonment up to two years, or a fine, and his transactions may be re-opened, if the court has reason to think that they are harsh or unconscionable.

IN INDIA. In India, the Indian Usurious Loans Act came into effect in 1918. Sir Cecil Walsh, once a Judge of the High Court at Allahabad, in the preface to his commentary on that Act, observes that the main features of the Act are framed almost entirely upon the model of the English Money-Lenders Act, 1900. Though the Indian Act does not require registration of a money-lender, nor does it forbid him from describing himself as a banker, yet it gives power to Civil Courts, to re-open any transaction of a loan in which the court is of opinion (Banker and Customer, by S. E. Thomas, p. 17), that the interest is excessive, or that the transaction as between the parties thereto, is substantially unfair (section 3 (*a*), (*b*) of the Indian Usurious Loans Act, 1918 (X of 1918)). Though a money-lender does not require registration a company proposing to enter on banking business, or proposing to use, as part of the name under which it proposes to carry on business, the term " banker " or " banking," requires registration, which will be granted only if its memorandum limits the objects of the company to the carrying on of the activities as set forth in section 277F of the Indian Companies (Amendment) Act, 1936, *infra*. The Bengal Money-Lenders' Act, 1933, makes registration compulsory in case of all money-lenders who are not permanent residents, or who have no permanent domicile. The city of Calcutta, however, is excluded from the operation of this Act and the Bengal Government is empowered to exclude municipalities from its operation so as to leave industrial finance unaffected by it.

Indian Law.

A BANKING COMPANY DEFINED BY STATUTE. The earliest attempt in India in the direction of formulating a definition was that of the Hilton Young Commission, which in para. 162 of its Report, put forward the recommendation that " The term ' bank ' or ' banker ' should be interpreted as meaning every person, firm, or company, using in its description or its title, bank, or banker or banking and every company accepting deposits of money subject to withdrawal by cheque, draft or order." The Indian Companies (Amendment) Act, 1936, though rejecting the former part of the definition proposed above and rightly so—has substantially accepted its latter part. Section 277F of that Act thus defines a banking company.

> A " banking company " means a company which carries on as its principal business the accepting of deposits of money on current account or otherwise, subject to withdrawal by cheque, draft or order, notwithstanding that it engages, in addition in any one or more of the following forms of business, namely :-
>
> (1) the borrowing, raising or taking up of money ; the lending or advancing of money either upon or without security ; the drawing, making, accepting, dis-

counting, buying, selling, collecting, and dealing in bills of exchange, hundies promissory notes, coupons, drafts, bills of lading, railway receipts, warrants debentures, certificates, scrips and other instruments, and securities whether transferable or negotiable or not; the granting and issuing of letters of credit, travellers cheques and circular notes; the buying, selling and dealing in bullion and specie; the buying and selling of foreign exchange including foreign bank notes; the acquiring, holding, issuing on commission, underwriting and dealing in stock, funds, shares, debentures, debenture stock, bonds, obligations, securities, and investments of all kinds; the purchasing and selling of bonds, scrips or other forms of securities on behalf of constituents or others; the negotiating of loans and advances; the receiving of all kinds of bonds, scrips or valuables on deposit, or for safe custody or otherwise; the collecting and transmitting of money and securities;

(2) acting as agents for Government or local authorities or for any other person or persons; the carrying on of agency business of any description other than the business of a managing agent, including the power to act as attorneys and to give discharges and receipts;

(3) contracting for public and private loans and negotiating and issuing the same;

(4) the promoting, effecting, insuring, guaranteeing, underwriting, participating in managing and carrying out of any issue, public or private, of State Municipal or other loans or of shares, stock, debentures, or debenture stock of any company, corporation or association and the lending of money for the purpose of any such issue;

(5) carrying on and transacting every kind of guarantee and indemnity business;

(6) promoting or financing or assisting in promoting or financing any business undertaking or industry, either existing, or new, and developing or forming the same either through the instrumentality of syndicates or otherwise;

(7) acquisition by purchase, lease, exchange, hire or otherwise of any property immovable or moveable and any rights or privileges which the company may think necessary or convenient to acquire or the acquisition of which in the opinion of the company is likely to facilitate the realisation of any securities held by the company or to prevent or diminish any apprehended loss or liability

(8) managing, selling and realising all property moveable and immoveable which may come into the possession of the company in satisfaction or part satisfaction of any of its claims;

(9) acquiring and holding and generally dealing with any property and any right, title or interest in any property moveable or immoveable which may form part of the security for any loans or advance or which may be connected with any such security;

(10) undertaking and executing trusts;

(11) undertaking the administration of estates as executor, trustee or otherwise;

(12) taking or otherwise acquiring and holding shares in any other company having objects similar to those of the company;

(13) establishing and supporting or aiding in the establishment and support of associations, institutions, funds trusts and conveniences calculated to benefit employees or ex-employees of the company or the dependents or connections of such persons; granting pensions and allowances and making payments towards insurance; subscribing to or guaranteeing moneys for charitable or benevolent objects or for any exhibition or for any public, general or useful object;

(14) the acquisition, construction, maintenance and alteration of any building or works necessary or convenient for the purposes of the company;

(15) selling, improving, managing, delevoping, exchanging, leasing, mortgaging, disposing of or turning into account or otherwise dealing with all or any part of the property and rights of the company;

(16) acquiring and undertaking the whole or any part of the business of any person or company, when such business is of a nature enumerated or described in this section ;

(17) doing all such other things as are incidental or conducive to the promotion or advancement of the business of the company.

DEFINITION PROPOSED TO BE INSERTED IN THE PROPOSED INDIAN BANK ACT.—The definition in Section 277F created considerable difficulties in deciding whether a company was a banking company or not. The chief difficulty arose out of the use of the term ' principal business ' in that section. A large number of banking companies claimed that they were not banks within the meaning of Section 277F which defined a banking company as a company which carried on as its principal business the acceptance of deposits subject to withdrawal by cheque, draft, or order and they did not accept deposits so withdrawable. These companies claimed that they were subject to the obligations imposed by law on banking companies, *e.g.* maintaining a minimum cash reserve. The amendment of October 1942 which added the following proviso to Section 277F attempted to remove these difficulties :

" Provided that any company which used as part of the name under which it carries on business the word ' bank,' ' banker,' or ' banking ' shall be deemed to be a banking company notwithstanding that the accepting of deposits of money on current account or otherwise, subject to withdrawal by cheque, draft or order, is not, or is not shown to be, the principal business of the company."

In the revised Draft Bill prepared by the Reserve Bank of India, ' banking ' and ' banking company ' are defined as follows : ' banking ' means the accepting of deposits repayable on demand ; ' banking company ' means any company which may be wound up under the Indian Companies Act, 1913 (VII of 1913) and which transacts the business of banking in British India.

With a view to exclude co-operative banks from the requirements of the proposed Bank Act it is proposed to exempt banks registered under the Co-operative Societies Act, 1912 (II of 1912) or any other law for the time being in force in British India relating to co-operative societies.

In the Draft Bill it is proposed to define the extent of business a banking company may engage in in any one or more of the following forms of business and no other, namely :—

(1) the borrowing, raising or taking up of money ; the lending or advancing of money either upon or without security ; the drawing, making, accepting, discounting, buying, selling, collecting and dealing in bills of exchange, hundis, promissory notes, coupons, drafts, bills of lading, railway receipts, warehouse receipts, debentures, certificates, scrips and other instruments, and securities whether transferable or negotiable or not ; the granting and issuing of letters of credit, travellers cheques and circular notes ; the buying selling and dealing in bullion and specie ; the buying and selling of foreign exchange, including foreign bank notes ; the acquiring, holding, issuing on commission, underwriting and dealing in stock, funds, shares, debentures, debenture stock, bonds, obligations, securities and investments of all kinds ; the purchasing and selling of bonds, scrips or other forms of securities on behalf of constituents or others ; the negotiating of loans and advances ; the receiving of all kinds of bonds, scrips or valuables on deposit, or for safe custody or otherwise ; the collecting and transmitting of money and securities ;

(2) acting as agents for governments or local authorities or for any other person or persons; the carrying on of agency business of any description other than the business of a managing agent of a company, including the power to act as attorneys and to give discharge and receipts;

(3) contracting for public and private loans and negotiating and issuing the same;

(4) the promoting, effecting, insuring, guaranteeing, underwriting, participating in managing and carrying out of any issue, public or private, of State, municipal or other loans or of shares stock, debentures, or debenture stock of any company, corporation or association and the lending of money for the purpose of any such issue;

(5) carrying on and transacting every kind of guarantee and indemnity business;

(6) promoting or financing or assisting in promoting or financing any business, undertaking or industry, either existing or new, and developing or forming the same either through the instrumentality of syndicates or otherwise;

(7) the acquisition by purchase, lease, exchange, hire or otherwise of any property immovable or movable and any rights and privileges which the company may think necessary or convenient to acquire or the acquisition of which in the opinion of the company is likely to facilitate the realization of any securities held by the company or to prevent or diminish any apprehended loss or liability;

(8) managing, selling and realizing all property movable and immovable which may come into the possession of the company in satisfaction or part satisfaction of any of its claims;

(9) acquiring and holding and generally dealing with any property and any right, title or interest in any property movable or immovable which may form part of the security for any loans or advances or which may be connected with any such security;

(10) undertaking and executing trusts;

(11) undertaking the administration of estates as executor, trustee or otherwise;

(12) taking or otherwise acquiring and holding shares in any other company having objects similar to those of the company;

(13) establishing and supporting or aiding in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or ex-employees of the company or the dependants or connections of such persons; granting pensions and allowances and making payments towards insurance; subscribing to or guaranteeing moneys for charitable benevolent objects or for any exhibition or for any public, general or useful object;

(14) the acquisition, construction, maintenance and alteration of any building or works necessary or convenient for the purposes of the company;

(15) selling, improving, managing, developing, exchanging, leasing, mortgaging, disposing of or turning into account or otherwise dealing with all or any part of the property and rights of the company.

(16) acquiring and undertaking the whole or any part of the business of any person or company when such business is of a nature enumerated or described in this section;

(17) doing all such other things as are incidental or conducive to the promotion or advancement of the business of the company;

(18) any other form of business which the Central Government may by notification in the Official Gazette specify as a form of business in which it is lawful for a banking company to engage.

What Constitutes a Customer.

SIR JOHN PAGET'S VIEW. There is, as yet, no statutory definition of "customer" either in England or in India. Although the earlier legal decisions are conflicting, the later rulings of English Courts on this point are quite clear. According to the older view, as expressed by Sir John Paget, "to constitute a customer there must be some recognisable course or habit of dealing in the nature or regular banking business . . . It is difficult to reconcile the idea of a single transaction with that of a customer. The word surely predicates even grammatically, some minimum of custom antithetic to an isolated act. It is believed that tradesmen differentiate between a customer and a casual purchaser." According to this view, in order to constitute a customer of a bank, a person had to satisfy two conditions. Firstly, that there was to be some recognizable course or habit of dealing between him and the bank and secondly, that the transactions were to be in the nature of regular banking business. As regards the first of the conditions, it was held in *Mathews* v. *Williams, Brown & Co.*, 10 T.L.R (1894) 886, that, in order to constitute a person a customer of a bank, he should have some sort of an account with the bank, but that the initial transaction in opening an account did not set up the relation of a banker and customer, and there had to be some measure of continuity and custom. It is due to this reason that some banks even now are reluctant to open new accounts with crossed cheques.

THE "DURATION THEORY" EXPLODED. The "duration theory" of which Sir John Paget was an exponent, was exploded by Mr. Justice Bailhache who in the course of his judgment in the case of *Ladbroke* v. *Todd*, 30 T.L.R. (1914) 433 observed: "The relation of banker and customer begins as soon as the first cheque is paid in and accepted for collection and not merely when it is paid." This view was confirmed in *Commissioners of Taxation* v. *English Scottish and Australian Bank* (1920) A.C. 683. Lord Dunedin, who delivered the judgment of the Board of the Privy Council said, "The word 'customer' signifies a relationship in which duration is not of the essence . . . . A person whose money has been accepted by the bank on the footing that the bank undertakes to honour cheques upto the amount standing to his credit, is, in the view of their lordships, a customer of the bank in the sense of the statute irrespective of whether his connection is of long or short standing (Bills of Exchange Act, 1882). This being a decision of the Privy Council is binding upon courts in India, though not on courts in England.

In *Savory & Co.* v. *Lloyds Banks Ltd.* (1932) T.L.R. 344, in the House of Lords, the facts of which were as set forth in the following paragraph: though

the point was not specifically raised by the parties, the judgment of their Lordships proceeded on the footing that those facts constituted the legal relationship of banker and customer.

SINGLE TRANSACTION MAY CONSTITUTE A CUSTOMER.—The plaintiffs were a firm of London Stock-brokers. They had two clerks in their employ, named Perkins and Smith. The plaintiffs sent out a number of cheques drawn on their bankers, the Midland Bank, and made payable to named payees or bearer. These cheques were handed to Perkins or Smith for posting. Instead of posting them as directed, Perkins and Smith stole the cheques and took them to a London branch of Lloyds Bank Ltd., and paid them in with instructions, that in the case of Perkins, the amount of the cheques should be credited to his account, which he had at a branch of the Lloyds Bank at Walkington, and in the case of Smith, to an account in the name of his wife at the Red Hill branch of the same bank. The first of these cheques was received before Mrs. Smith in fact became a customer. The plaintiffs subsequently discovered the fraud of their clerks and sued the defendants, the Lloyd Bank Ltd., to recover the amount of these cheques on the ground of conversion.

On these facts, one of the questions that required determination, *inter alia* under section 82 of the Bills of Exchange Act, 1882, was, whether the defendants had received payment of these cheques for a customer within the meaning of that section.

FREQUENCY ANTICIPATED.—In conclusion, frequency of transactions is not essential to constitute a person as a customer, but it is true to say that his position must be such that transactions are likely to become frequent. It means that, as soon as the banker receives cash or cheque to be collected on the definite understanding (1) not to permit drawing against it until (*a*) the cheque is cleared, (*b*) the precautions taken do not bring to light any objection to the relationship and (2) to terminate relations in case he finds any reason for discontinuing the same, the relationship between the banker and his customer may be said to have begun. Bankers satisfy themselves regarding the *bona fide* and respectability of new customers, and if they take the necessary precautions as indicated above, the persons opening accounts come in the category of customers for the purpose of protection given to the bankers under the Negotiable Instruments Act.

DEALINGS TO BE OF BANKING NATURE.—The second requirement is that the dealing must be of a banking nature. This is in contradistinction to the casual services, rendered by a banker, to persons who have opened no account with him. For instance, if a person occasionally goes to a cashier of a bank and gets cheques cashed or deposits valuables or securities for safe custody, or buys a few stamps, he does not thereby become a customer of the bank, as such transactions are not regarded in the nature of the real banking business. According to the judgment of the Judicial Committtee of the Privy Council in *Commissioners of Taxation* v. *The English Scottish and Australian Bank*, already referred to "the contrast is not between an *habitué* and a newcomer, but between a person for whom the bank performs a casual service, *e.g.*, cashing a cheque for a person introduced by one of their customers, and a person who has an account of his own at the bank.

It should, however, be remembered that a banker cannot protect himself by opening a short account or crediting an item to sundries account, as it cannot invest the party for whom it is collected with the status of a customer.

POSITION REGARDING DEPOSIT ACCOUNT—It is generally believed, that the account, which establishes the relationship, need not necessarily be a current account; however, the position regarding deposit account does not appear to be well defined. The difficulty in connection with the latter type of account, may arise owing to the fact that bankers do not generally ask for references in case of persons wishing to open deposit accounts, and it is, therefore, contended by some that, if a deposit account is opened by means of a cheque to which the prospective customer had no title, the banker will not be entitled to claim protection if no inquiry concerning the customer is made on the opening of the account. If the cheque in question was collected after the initial stage of the account had passed, it is believed that protection could be claimed. Much depends upon the length of time intervening between the opening of the deposit account and the collection of the cheque for which protection is claimed.

The General Relation.

BANKER NOT A MERE DEPOSITORY OR TRUSTEE—The mere opening of an account current with a banker, and the banker's acceptance thereof, involve contractual relationship by implication. According to the old view, a banker was usually thought of as a reliable depository, as was the case with early goldsmiths who paid no interest on deposits. A mere depository is he who receives a sealed package of valuables for safe custody and undertakes to return it unopened. Banks act as custodians, but that is only a subsidiary function. The mere receiving of money, keeping it locked up in safes, and repaying whenever demanded, would be unremunerative. Again, if the banker acts as a trustee, *i.e.*, receives money and invests it, or otherwise uses it according to the terms of the trust, and has to account in detail for everything he has done with it, the function is not that of a banker in the true sense of the word.

RELATION OF DEBTOR AND CREDITOR—"The relation of banker and customer," as Sir John Paget aptly remarks, "is primarily that of debtor and creditor, the respective positions being determined by the existing state of the account. Instead of the money being set apart in a safe room, it is replaced by a debt due from the banker. The money deposited with him becomes his property and is *absolutely at his disposal*, and, save as regards the following of trust funds into his hands, the receipt of money by a banker from or on account of his customer constitutes him merely the debtor of the customer with the "superadded" obligation to honour his customer's cheques drawn upon his balance, in so far as the same was sufficient and available (*Foley* v. *Hill* (1848), 2 H.L.C. 28). To the same effect, see *Dharamdas* v. *Gangadevi*, 29 A. 773; *Subramaniam Chettiar* v. *Kadiressan*, 39 M. 1081; *Ichha* v. *Natha*, 13 B. 338; *Isher* v. *Jiban*, 16 C. 25; *Official Assignee of Madras* v. *Smith*, 32 M. 68. The mere fact that a banker invites deposits, and is prepared to pay interest on them, is proof enough of his intention to make use of it as he likes, and earn interest therefrom, so as not only to enable him to pay interest to his depositor, but also to earn profits for himself. But even if the banker pays no interest on the money deposited, he is his customer's debtor and not a bailee, because he undertakes to repay on demand a sum, equivalent to the amount deposited with him and the customer has no right whatsoever to claim the identical coins or notes, deposited by him with his banker. The latter can pay the amount in any kind of legal tender."

DEMAND NECESSARY IN CASE OF DEBT DUE FROM BANKER—To say that the relationship between banker and customer is that of debtor and creditor is not

a complete statement, in that one has to add to it that the debt due by a banker to his customer differs from ordinary commercial debts in one important respect, *viz* that the general rule by which a request by the creditor for payment is unnecessary, does not apply. This point actually came for decision in *Joachimson* v. *Swiss Banking Corporation*, [1921] 3 K.B. 110, where it was held that in the case of a debt due from a bank, an express demand for repayment by the customer is necessary before the debt becomes "actually and accruing due", on the ground that, otherwise, the banker, by offering the money due to his customer, would summarily close his customer's account without notice and possibly injure his customer's credit by dishonouring his cheques. Atkin L. J. (now Lord Atkin) a member of His Majesty's Privy Council, gave a useful summary of the one and indivisible contract created by the account current in the following words:—

> The bank undertakes to receive money and to collect bills for its customer's account. The proceeds so received are not to be held in trust for the customer, but the bank borrows the proceeds and undertakes to repay them. The promise to repay is to repay at the branch of the bank where the account is kept and during banking hours. It includes a promise to repay any part of the amount due against the written order of the customer addressed to the bank at the branch and as such written orders may be outstanding in the ordinary course of business from two or three days, it is a term of the contract that the bank will not cease to do business with the customer except upon reasonable notice. The customer on his part undertakes to exercise reasonable care in executing his written orders so far as not to mislead the bank or to facilitate forgery. I think it is necessarily a term of such contract that the bank is not liable to pay the customer the full amount of his balance until he demands payment from the bank at the branch at which the current account is kept. Whether he must demand it in writing, it is not necessary now to determine.

In his admirable summary Atkin L. J. refers to the obligation of the bankers to repay as being limited in point of locality to the branch where the account is kept. The point was expressly raised and decided in *Clare & Co.*, v. *Dresdner Bank*, [1915, 2 K. B. 57, the facts of which admit of being stated within a short compass: the plaintiffs had an account at the Berlin branch of the defendant bank, which had its head office in Germany, and a branch in London; they wrote to the London branch demanding payment of the balance due on the account at the Berlin branch and upon refusal to pay sued the London bank without having made any request to the branch in Berlin to pay or to remit the balance to London. It was held that locality was an essential part of the debt owing by a banker to his customer and that his obligation to repay was confined to the place where the account was kept.

In *Leader & Co.* v. *Direction der Disconto Gesellschaft* (31 Times L. R. 83) the facts were similar with the important difference that in that case an actual demand was made at the branch where the account was kept and refused. In the circumstances it was held that it was no answer to the claim that the debt was payable in a foreign country provided that the judgment-debtor either resided or carried on business within the jurisdiction. Referring to these cases Hill J. in *Richardson* v. *Richardson*, [1927] P. 228, makes the following observations which merit carefull consideration: "It is the practice of banks at the request of a customer to transfer amounts to the credit of the customer from one account to another. And perhaps it is an implied term of the contract that the bank shall at the request of the customer make such

transfer at the expense of the customer, and, if a conversion from one currency to another is necessary, at the rate of exchange ruling at the time of the transfer."

Illustration. The implications of the above principle may be of no practical importance in times of peace, but may have far-reaching consequences in conditions of war. Let us take an illustration: A, a British Indian subject happens to be in Holland in April, 1940, before the German invasion. A requests the Amsterdam branch of a Dutch Bank where he has a current account to transfer his credit balance to the Bombay branch of the same bank. Owing to exchange restrictions or difficulty of communications, the transfer is not made. A can file a suit in Bombay and obtain satisfaction of the judgment from the Bombay branch. This can be done only on the basis that the Amsterdam and Bombay branches are part of one legal indivisible entity.

CONFLICT OF VIEWS BETWEEN HIGH COURTS REMOVED BY AMENDMENT OF ARTICLE 60 OF LIMITATION ACT—The question was considered and decided, chiefly with reference of the language of articles 59 and 60 of the Indian Limitation Act, 1908. Article 59 originally provided a period of three years for recovery of "money lent under an agreement that it shall be payable on demand," from the time "when the loan is made". Article 60, originally provided the same period for "money deposited under an agreement", from the time "when the demand is made". In the undermentioned cases (*Ichha* v. *Natha*, 13 B. 338, at p. 342; *Dharamdas* v. *Gangadevi*, 29 A, 773, at p. 778), according to the High Courts of Bombay and Allahabad, the legal relation between a native banker and his customer, was that of borrower and lender within the meaning of article 59, therefore, no express demand was necessary for the debt to be recoverable from a native banker. On the other hand, the High Courts of Calcutta and Madras held that the legal relation in such cases, was that of depositee and depositor within the meaning of article 60, and consequently demand was necessary before the cause of action for a suit to recover a debt from a banker could arise (*Isher* v. *Jiban*, 16 C. 25 (28); *Perundevitayar* v. *Nam*, 18 M. 390).

This conflict has been removed by the amendment of article 60, in which the words "including money of a customer in the hands of his banker so payable," have been added after the words, "payable on demand". The effect of the amendment is to make express demand a necessary condition for a cause of action to recover a debt due from a banker (*Juggi* v. *Kishen* 37 A. 292; *Bhima* v. *Venu*, 28 Bom L.R. 73; *Moti* v. *Naranji*, 27 Bom. L.R. 423; *Sitabai* v. *Bhanu*, 29 Bom. L.R. 427; *Subramanian* v. *Kadiresan*, 39 M. 1081).

TRUSTEE IN CASE OF SAFE CUSTODY DEPOSITS—With regard to securities and valuables deposited for safe custody, the banker's position is different. The property in them remains with the customer, who can claim them back. For example, when a customer pays into his bank a cheque drawn upon another bank, such a cheque being received by the bank as a B/C (bill for colection), the customer will be entitled to claim the cheque or its proceeds, if the collecting bank fails before it has collected it and has credited the proceeds to the customer's account. On the other hand, if the deposit is made for a specific purpose, and the banker stops payment before applying it to such purpose, the depositor cannot claim the money paid and must content himself with his right of proof as a general creditor (*In re Barned's Banking Co.* (1871), 40 L.J. Ch. 730). The case is different if the specific purpose has been partially carried out. "Thus in the case of *Farley* v. *Turner* (1857), 26 L.J. Ch. 710, it appeared that

a customer of a bank A had £942 to the credit of his account. He paid in a further sum of £707 with a written direction that £500 out of that sum should be forwarded to bank B to meet a bill about to become due. A sum of £500 was sent to bank B, but before the bill became due, bank A ceased to carry on business and the sum of £500 was returned by bank B. The customer claimed back this £500, and it was held that, as the amount had been specifically appropriated, it belonged to him and not to the general creditors " (Banking and Negotiable Instruments by Frank Pillyard, 4th Edn., p. 95). Similarly, where a branch of a bank A had received bills from Mr. B, who was not its constituent, for collection and remittance of the proceeds, and the bank after collection but prior to remitting, suspended payment, it was held, that B had employed the bank in a fiduciary capacity and that he was entitled to a prior charge on the balances held by the bank as a whole at the date of suspension of payment (*Shaw Wallace & Co. v. Amritsar National Bank (In liquidation)*, 7 Lah. 155, at p. 158).

Agent of customer. When a banker buys or sells securities on behalf of his customer, he performs an agency function. Similarly, when he collects cheques, dividends, bills or promissory notes on his customer's behalf, he acts as his agent. Besides, he may also act in various other agency capacities, for example, as a trustee, attorney, executor, correspondent or a representative.

Banker's right to combine accounts.—Until recently, it was generally believed that a banker could combine several accounts kept by a customer in his own right, unless by agreement, earmarking, course of business, etc., he was under obligation to keep them separate. This view was probably based upon the judgment in *Garnett* v. *McKewan* (1872), 27 L.T. 560. In this case, the plaintiff had a dormant overdraft with one branch of a bank and a few years after he had stopped business with the branch, he opened a new account with another branch of the same bank, where his credit balance just exceeded the amount of the dormant debit balance referred to above. The amount required for the clearing of the overdraft with the first branch was transferred from his account with the second branch, which led to the dishonour of the customer's cheques drawn against his credit balance. The Court's decision was in favour of the bank, as it was held that there was no special contract or usage proved to keep the accounts separate and that, while it might be proper and considerate to give notice to a customer of intention to combine account, there was no legal obligation on a bank to do so arising either from the express contract or course of dealing.

Customer's consent or notice to him. A totally different view appears to have been taken in a later case (*Greenhalgh* v. *Union Bank of Manchester*, 1924) 2 K. B. 153). The learned judge observed, " If a banker agrees with his customer to open two accounts or more, he has not, in my opinion, without the assent of the customer, any right to move either assets or liabilities from the one account to the other; the very basis of his agreement with his customer is that the two accounts shall be kept separate . . . ."

Caution. Whilst it is still considered in some quarters, that the above view does not form part of a binding judgment, it is generally recognized that a banker would be inviting trouble, if he combines two accounts in a customer's name and as a consequence of it, returns a cheque drawn on the credit balance of one of them, unless the banker can show that he had given due notice of his

intention to set off or there was an agreement, or established course of business in support of his action.

A safeguard. A banker can overcome this difficulty by taking a letter of set-off from customers who open, in the same capacity, more than one account, so that when necessary he could combine them without liability to strike a balance by offsetting debit and credit balances of different accounts. The advantages of the course suggested are that, first it proves the right of set-off of the banker, and secondly, that it dispenses with the need for notice.

Notice applicable to contingent or future debts. It may, however, be observed that the right to combine two or more accounts, if it exists, is applicable to existing debts due from the customer, and not to contingent debts or liabilities falling due at a future time. Thus, if a banker holds a bill not yet due to which his customer is a party liable to pay the amount in case of its dishonour the banker cannot appropriate the amount of that bill from his customer's account.

Special Features of the Relationship.

The following are the most important:—

I. STATUTORY OBLIGATION IN INDIA—*Obligation to honour cheques.* By opening a current account of a customer, the banker undertakes to honour the cheques drawn by his customer so long as his balance is sufficient to allow the banker to do so, *provided that the cheques are presented within a reasonable time after the ostensible dates of their issue.* This duty is also imposed upon him by section 31 of the Negotiable Instruments Act, 1881, which runs as follows:—

> The drawee of a cheque having sufficient funds of the drawer in his hands, properly applicable to the payment of such cheque, must pay the cheque when duly required so to do and in default of such payment must compensate the drawer for any loss or damage, caused by such default.

There does not appear to be any corresponding section in the Bills of Exchange Act, 1882, but the position of a banker in England as defined by the authorities, is in this respect the same as that of his *confreres* in India.

Extention of the obligation. This statutory obligation on the part of a banker to honour his customer's cheques drawn on his account current, may be extended by an agreement, express or implied, to the amount of overdraft, agreed upon; otherwise, the banker is not liable for dishonouring his customer's, cheque for the meeting of which, the latter has not sufficient funds with the former.

If the banker occasionally honours a customer's cheques whereby the customer's account is overdrawn and later on it is put in order on being asked by the banker, the latter should in his written communication to the former use such phrase as "please rectify this matter." Otherwise the customer may claim damages if his cheque is not cashed and is returned without payment for want of funds alleging an arrangement to over pay and in support of which he may say that on previous occasions his cheques were honoured though the banker had insufficient funds belonging to him for the purpose.

Presentation of cheques within a reasonable time. Unless a cheque is presented within a reasonable time after the ostensible date of its issue, it will not be honoured. Generally speaking, a cheque presented six months or more after the date of its issue, is considered a stale one. Some banks in England,

honour cheques if presented within twelve months, but, both in England and in India, a period of six months is allowed for presentation of cheques according to the practice of bankers. A banker must at any rate allow a reasonable period within which cheques drawn upon him should be presented; such period may vary in accordance with the custom and practice prevalent among the bankers. A banker is not bound to honour an undated cheque (*Griffiths* v. *Dalton* (1940), 2 K.B. 264).

Bankers to have reasonable time for crediting funds, before they can be drawn against. The banker on whom the cheque is drawn, should have *a reasonable time in which to place the funds paid to the credit of the customer's account before they can be drawn against.* The question, what constitutes a reasonable time, depends upon the circumstances in each case. In actual practice, generally, no difficulty arises, as well organized banks in these days, take very little time in making the necessary entries in their books. However, in the absence of a special agreement, express or implied from previous dealings between the banker and his customer, a banker is not bound to credit his customer's account with the amount of cheques or drafts upon other banks, sent in for collection before they are realized. He must, however, place these amounts to the credit of his customer's account within a reasonable time after realization. Generally when such cheques and drafts are received from customers of known respectability, banks in India credit the respective accounts with the amounts before they are collected and honour cheques drawn against uncleared credits. It must, however, be understood that in the absence of a special agreement to the contrary, the customer is not entitled to treat cheques sent in for collection as cash, and consequently, some banks caution customers by means of a notice, in their pass books and their paying-in slip books, to the effect that their customers should not draw cheques against uncleared items of credit. In the case of *Underwood* v. *Barclay's Bank*, [1924] 1 K.B. 775, the court of appeal made it clear that, in the absence of an express or implied agreement, giving the customer a right to draw cheques against uncleared items of credit, a banker is entitled to return such cheques with the mark "Effects not cleared". If however, it is the practice of a banker to credit the customer's account with uncleared items of credit as cash, and communicate the same to his customer, who relying on such items draws upon his account, the banker, it is presumed, will not be entitled to dishonour his customer's orders, except in a case where an agreement to the contrary exists.

Consequences of a wrongful dishonour. The only other question, which remains to be discussed in connection with the duty of a banker to honour cheques, is to state the consequences of a wrongful dishonour. If a banker, without justification, dishonours his customer's cheque, he makes himself liable to compensate the customer for injury to his credit (*Marzetti* v. *Williams* (1830), I.B. and Ad. 415). The amount of compensation recoverable by the drawer of a cheque from a banker in case of wrongful dishonour, is not limited to the actual pecuniary loss, sustained by reason of such dishonour. The words "loss or damage" used in section 31 of the Negotiable Instruments Act, 1881 do not mean only pecuniary loss, but also *loss of credit* or *injury to reputation*. Thus, the customer is entitled to claim substantial damages, even if he has sustained no actual pecuniary loss, provided he can show that his credit has suffered by the cheque being dishonoured. Theoretically, proof of actual injury is not necessary to warrant substantial damages (*Robin* v. *Steward* (1854) 14 C. B. 595). If the customer is a trader or a businessman, the damages may be substantial but it may now be taken as settled law that a non-trader is not

entitled to recover substantial damages for the wrongful dishonour of his cheque unless the damage he has suffered is alleged and proved as special damage. In an action for breach of contract, damages are not at large: a plaintiff must always plead and prove his actual loss, otherwise he is entitled to nominal damages only. There are only two exceptions to this general rule: one is that of an action for breach of promise of marriage and the other where a trader who is in funds at his bank has his cheque wrongfully dishonoured. In *Wilson* v. *United Counties Bank Ltd.* (1920), A.C. 102, Lord Atkinson referred to the awarding of exemplary damages to a trader as exceptional but the point as regards a non-trader was not affirmatively decided till the recent judgment of Lawrence J. in *Gibbons* v. *Westminster Bank* (1939), 2 K.B. 882. In that case Mrs. Margaret Gibbons, a non-trader, paid a cheque for £9-16-0 drawn on the Westminster Bank to her landlord in payment of rent. The cheque was dishonoured owing to a slip on the part of the bank regarding the credit of a sum of money paid previously by her. She was awarded only forty shillings as nominal damages as she, being a non-trader, was not entitled to recover substantial damages unless the damages were alleged and proved as special damages.

For instance, in the case of *Sterling* v. *Barclay's Bank Ltd.* (the Accountants' Journal, September 1930, p. 367), where the bank had wrongfully dishonoured its customer's cheque, Mrs. Sterling was not entitled to substantial but to reasonable damages, because Mrs. Sterling had had two cheques dishonoured previously, and also because a witness for the plaintiff had said that, "people in that particular trade did not think much of dishonouring cheques as they lived from hand to mouth."

Assessing of damages. It may be added, that the amount of damages will not necessarily be large only because the amount of the cheque dishonoured is large, as a customer is supposed to suffer more in credit if his cheque for a small amount is dishonoured than in the case of one for a large amount. In *Davidson* v. *Barclay's Bank Ltd.* (1940), 1 All E.R. 316, the plaintiff, a credit bookmaker was awarded £250 damages for the wrongful dishonour of his cheque for £2-15-8. Hilbery J. whilst observing that there was hardly any other business which was more sensitive on the subject of its credit than that of a bookmaker laid special stress on the small amount involved which made matters worse for the bank. As he said, he could not imagine anything more damaging to the credit of a bookmaker than a statement which suggested that he could not meet a cheque for the trifling amount of £2-15-8. In assessing the damages for injury to credit the courts give due consideration to various factors, such as financial position and business reputation of the customers and the customs of the trade to which he may belong.

Payment of domiciled bills. In the absence of an agreement, however, no such duty rests upon the banker to honour bills accepted by his customers and made payable by the banker. But it may be stated that bankers, as a rule are willing to render this service, and, therefore, even a very slight evidence would be accepted to establish an agreement on the part of the banker, to honour his customer's bills domiciled with him. For instance, if a customer pays to his banker a sum, stating that it is for the purpose of meeting a bill and the banker receives it, without informing the customer that it will not be so applied, this will be considered as sufficient evidence of an agreement, on the part of the banker, to apply the money as directed. If the banker has habitually paid his customer's bills, he will be taken to have agreed to continue to do so, as long as he has sufficient funds to the credit of the customer's current account and has not given notice to his customer of his intention to the contrary.

II. BANKER'S GENERAL LIEN. Another special feature attaching to this relationship is that bankers may, in absence of an agreement to the contrary retain as a security for a general balance of accounts any goods and securities bailed to them (Indian Contract Act, 1872 (IS of 1872), s. 171). This right to retain goods is known as lien. "General lien", which bankers, factors, wharfingers, attorneys of High Court and policy-brokers may have, is a term used to distinguish it from the particular lien of a craftsman on goods on which he has expended labour, time or money, such as a piece of cloth made out of the yarn supplied to a weaver by his customer, when the latter has not paid the weaving charges. The banker's general lien, confers upon him the right to retain securities, etc. in respect of the general balance due by their owner to the banker. It extends to all securities placed in his hands as a banker by his customer, which are not specifically appropriated. A banker can draw on them to liquidate a general balance due from the customer, either at the time when the securities were deposited, or at any subsequent time, while they lawfully remain in his hands. The Indian law, besides permitting the banker to exercise his lien in case of all those securities which come into his possession in the course of his dealings as a banker with his customers, also extends the right even to goods, unless there is a contract, express or implied, inconsistent with the lien.

Lien, an implied pledge. As far back as the middle of the 19th century, it was judicially decided that, " bankers most undoubtedly have a general lien on all securities deposited with them as bankers by a customer unless there be an express contract or circumstances that show an implied contract inconsistent with lien" (*Brandao* v. *Barnett* (1864), 3 C.B. 519). This general lien of the banker is regarded as something more than an ordinary lien; it is an implied, pledge. The distinction is not material in the case of bills, notes and cheques, as under section 43 of the Indian Negotiable Instruments Act, 1881, the banker, being regarded as a holder for value to the extent of the sum in respect of which the lien exists, can realize them when due; but in the case of the other negotiable instruments, *e, g.*, bearer bonds, coupons, and share warrants to bearer, coming into the banker's hands and thus becoming liable to the lien, the character of a pledge enables the banker to sell them on default if a time is fixed for the repayment of the advance, or, where, no time is fixed, after request for repayment and reasonable notice of intention to sell (*Burdick* v. *Sewell* (1884), 13 Q.B.D. 159) and apply the proceeds in liquidation of the amount due to him. The right of sale extends to all property and securities belonging to a customer in the hands of the banker, except title deeds of immovable property which obviously cannot be sold. In the last mentioned case he has only the right to retain the deeds.

No agreement for creation of lien necessary. No agreement is necessary to create the right of lien, for, under the Indian law, such an agreement is implied by the terms of section 171 of the Indian Contract Act, 1872 (IX of 1872) so long as the same is not expressly excluded. In order that the lien should arise, (1) the property must come into the hands of the banker in his capacity as a banker; (2) there should be no entrustment for a special purpose inconsistent with the lien; (3) the possession of the property must be lawfully obtained in that capacity of a banker; and (4) there should be no agreement inconsistent with the lien.

Banker has no lien on safe custody deposits. Banks generally receive for safe custody, customer's valuables, such as securities, documents of title, plate,

etc. Such articles, being regarded as those left with the banker for a specific purpose, are not subject to the banker's general lien and a contract to the contrary is implied (*Cuthbert* v. *Roberts* (1909), 2 Ch. 226, C.A.). This is the position in law, either because the banker, in receiving the securities or valuables for safe custody, is supposed to be acting as a bailee and not in the capacity of banker, or because the entrustment is for a special purpose inconsistent with the assertion of the lien. If, however, negotiable securities deposited for safe custody have to be dealt with by the banker in the ordinary course of his business as a banker, then the lien will arise. In case the securities and valuables are put in a box and kept with the banker merely for safe custody, then the banker, being in the position of a bailee, cannot, in any circumstances, have a lien on them. If the bailor has no title to the valuables deposited, the bailee cannot exercise any right of lien and if it can be shown that they had been stolen or misappropriated, the banker holding them will be compelled to return them to the true owner, whether or not the receipt of the defaulting customer is obtained. The issue of the safe custody deposit receipt alone is sufficient to imply a contract to the contrary, as the banker thereby admits that the deposit is for a specific purpose. In *Leese* v. *Martin* (1873), L.R. 17 Eq. 224, it was held that a banker, who, according to the usual custom in London between bankers and stock brokers, made advances upon the security of share certificates and other property deposited with him, did not have a general lien on boxes and their contents, deposited with him for convenience and safe custody by the stock broker. Similarly, in *Bank of Africa* v. *Cohen* (1909), 2 Ch. 129, the court held that, where documents had been originally delivered by a customer to a bank for safe custody and the customer subsequently became a party to a void agreement purporting to charge them, the banker did not have any lien over those documents.

No lien on bills of exchange or other documents entrusted for special purpose. A good illustration of what is a special purpose inconsistent with the lien is found in the case of *Greenhalgh* v. *Union Bank of Manchester* (1924), 2 K.B. 153. In that case A sold goods to B and for the price A drew bills of exchange on B which B accepted. B sold the goods in turn to C, similarly drawing bills on C which C accepted. B handed C's bills to the defendant bank for collection with directions that the proceeds should be utilized to meet the bills which B had accepted, payable at the defendant bank. The defendant bank recognizing the special purpose for which bills bearing C's acceptance were handed over for collection, opened a seperate account for them called the "Provisional Bills Account." The proceeds of bills accepted by C after collection were held not to be subject to the banker's lien as they were entrusted for a special purpose inconsistent with the lien. Similarly on the dishonour of a documentary bill, the bank is not entitled to apply the security accompanying the bill, to any other debt due from the customer for whom the bank discounted the bill (*Latham* v. *Chartered Bank of India* (1874), 17 Eq. 205). Where a customer had deposited a life policy with his bankers, accompanied by a memorandum of charge to secure overdrafts not exceeding £4,000 together with interest, commission and charges, Mr. Justice North held, that the banker's lien was limited to the amount specified (*In re Bowes, Earl of Strathmore* v. *Vane* (1886), 33 Ch. D. 586; 3 Digest 289, 895).

Lien attaches to bonds and coupons deposited for collection. Where bonds are deposited with a banker, who is authorized to cut off the coupons and collect them, the lien attaches to the bonds as well as coupons, because they come into his hands as a collecting banker. But if the bonds are deposited merely for

safe custody, and the customer cuts off the coupons and hands them to the banker for collection, the lien can be exercised only on the coupons, and their proceeds, which come into his hands as a collecting banker. This view is doubted by Mr. Chorley who thinks that by implication the deposit is for safe custody. No lien; however, will arise in respect of the bonds. In *Jones* v. *Peppercorne* (1858), 28 L.J. Ch. 158, the general lien was upheld, because the brokers had been given powers to sell the securities deposited. But no lien will arise over the bonds, if there is evidence from the terms of the receipt given by the banker, that the securities are received by him expressly for safe custody, as, for example, if the receipt specifically acknowledges that the bonds are to be held by the banker for safe custody. The general lien applies to bills, cheques, moneys entrusted or paid to him as well as goods that come into his hands, in his *character as a banker* (*Misa* v. *Currie* (1876), L.R. 1 App. Cas. 554).

No lien on money, deposited for a specific purpose. A banker has no right of lien in respect of money deposited by a customer, or a credit balance earmarked by a customer for a specific purpose, although the lien could be exercised if the banker had no express or implied notice of the purpose of the deposit. The implied general lien for balance of account cannot be exercised where securities are specifically deposited as cover for specific debts, as the special contract excludes the lien, such contract being inconsistent with the existence of a general lien on the property.

Lien on securities allowed to remain in banker's hands after repayment of loan secured. Whether securities deposited to cover a specific advance, and after repayment of that advance remaining in the banker's hands, are subject to a general lien for a balance due to the banker, remained for some time doubtful. It was doubted, at any rate, in *Jones* v. *Peppercorne* (*supra*); in *Wilkinson* v. *London and County Bank*, (1884), 1 T.L.R. 63, it was assumed throughout that a customer, who deposited securities as cover for particular advances, was entitled to claim them back on the payment of those advances, notwithstanding that he was still indebted to the bank. Finally in *Re London and Globe Finance Corporation* (1902), 2 Ch. 416, it was decided that if the securities so deposited are left in the hands of a banker after the loan secured is cleared, the securities become subject to the general lien as the customer by leaving them is supposed to have redeposited them. On the other hand, if, upon sale of the securities deposited for securing an advance there is a surplus remaining, the banker may have a right to set off such surplus as against other sums due on general account.

No lien on documents or valuables, left in the banker's hands inadvertently. No lien can arise in respect of *documents or valuables left inadvertently with the banker*, or on property which is placed in his hands with the object of covering an advance which is not granted (*Lucas* v. *Dorrein*, 13 R.R. 480). The banker will not get such lien, if he knows at the time of the deposit of the securities or valuables, that they are not the property of his customer. He could enforce his lien against the true owner, provided the latter had given his consent or was aware that the securities were being deposited with the banker. It is usual that, in the case of negotiable securities, the banker is able to enforce his lien although the securities may belong to a third person, as he is not then necessarily affected with notice of adverse ownership.

Credit and liability must be in the same rights. No lien arises on the current account balance or the deposit account of a partner in respect of a debt due from the firm, as the credit on the one hand and the liability on the other do

not exist in the same rights (*Wolstenholm* v. *Sheffield Bank* (1886), 54 L.T. 746). Similarly, a banker cannot set off any credit balance of a partnership account against moneys due from one or more of its partners on their individual accounts.

Banker's lien and the Limitation Act. The banker's right of lien is not barred by the Law of Limitation. The effect of the Limitation Act is only to bar the remedy and not to discharge the debt. Consequently, it does not affect property over which the banker has a lien.

No lien for amounts not due. No lien arises until the due date, in respect of an advance of a specific amount made for a definite period, as there is no debt owing till then; nor can the banker retain moneys of the customer against bills discounted by him for the customer, but not yet due, except perhaps in the case of the customer's bankruptcy.

No lien in respect of trust account. There is also no right of lien in respect of a separate account maintained by a customer which is known to the banker as a trust account (*Ex parte Kingston*, L.R. 6 Ch. 632; *O. R. M.* v. *Nagappa Chettiar*, 43 Bom. L.R. 440 (P.C.)) Mere knowledge, however, derived from the customer's position (*e.g.*, a sharebroker) that he is likely to deal with the moneys of his clients and others will not exclude the lien (*Thomson* v. *Clydesdale Bank, Ltd.* (1893), A.C. 282; 3 Digest 188, *380*). If the bank has no knowledge and it has not during the currency of the account received notice of the trust character of the funds, the lien can be exercised (*Union Bank of Australasia, Ltd.* v. *Murray Aynsley* (1898), A.C. 693).

III. BANKER'S OBLIGATION—*Secrecy of the customer's account.* As the disclosure of matters relative to the customer's financial position may do considerable harm to his credit and business, the banker should take scrupulous care not to disclose the state of his customer's account. This obligation on the part of the banker, although recognized in practice, was not legally imposed on him till 1924, when *Tournier case* (1924), 1 K.B. 461, added this implied term to the contract between banker and customer, whenever and however that relationship was constituted. It requires that the banker *must not disclose the condition of his customer's account except on reasonable and proper occasions* and the obligation to observe secrecy does not end even with the closing of the customer's account.

Reasonable and proper occasions for disclosure. What is to be regarded as a reasonable and a proper occasion? Answering questions by a proposed guarantor or under compulsion of law can certainly be cited as instances of proper occasions. Similarly, when an overdraft is guaranteed, it would seem that the guarantor has a right to be informed of the extent of his liability and the banker is justified in disclosing to him the condition of the customer's account so far as it is necessary for the purpose. It is considered an uncodified duty of a banker to answer inquiries regarding his customer's general position and character, put to him by a person contemplating business relations with that customer (*Robshaw* v. *Smith* (1878), 38 L.T. 423).

Limitations on banker's obligation as regards secrecy. It is believed by some that in answer to the inquiries from bodies such as the trade protection societies, the banker might give general information regarding his customer's financial position, while others are of opinion that no exception should be made in their cases. The general view previously accepted, that the banker would not make himself liable for slander or libel in any case where he *bona fide* answered such

inquiries made by persons really interested, provided he confined his answers to the facts within his knowledge, was modified by the decision in *Tournier* v. *National Provincial and Union Bank of England* (1924), 1 K.B. 461. Until then, there was no conclusive or effective judgment on the question of limitation, if any, on the banker's obligation to maintain secrecy with regard to his customer's account. The effect of this decision may be summarized as under :—

When disclosure is justified. It is an implied term of the contract between a banker and his customer that the former will not divulge to third persons, without the express or implied consent of the latter, the state of his accounts. For instance, in cases where the customer has given his banker as a reference, the latter will be fully justified in answering all the trade references invited by the customer. When a customer introduces the proposed guarantor to his bank it is considered by some writers to be sufficient ground to enable the banker to disclose his customer's affairs to the extent to which it may be necessary to ensure that the guarantee is not given in the dark; but it is safer to get the express consent of the customer to discuss his affairs to the would-be guarantor. Another exception to the banker's obligation of secrecy with regard to his customer's account is when he is compelled to disclose the state of the account by order of a court as in that case his duty to obey the court's order overrides his duty to his customer. Again, a banker will not make himself liable for any slander or libel if he divulges the state of his customer's account when he is under a public duty to disclose, namely, in case of danger or treason to the State. It appears, that in time of war an instance of trading with the enemy coming to banker's knowledge would justify his disclosure in the interest of the State. Lastly, when the protection of the banker's own interests legally requires it (*e.g.*, in an action against the customer for money due), he will not make himself liable by disclosing the state of his customer's account. Similarly when a bank calls upon the guarantor for payment, giving the amount of the indebtedness of his customer for which the guarantor is liable the disclosure is justifiable.

Common courtesy. Bankers have, of course, always acted honourably upon the principle of treating their customer's affairs in confidence and only disclosing them in exceptional and justifiable circumstances. All the same there is a well recognized practice among bankers themselves, generally described as "a common courtesy" (see Appendix A, form No. 17), whereby a bank, desiring information (*e.g.*, as to the credit of a proposed guarantor or surety, or of an acceptor of a bill under discount, or of a bill accepted by the customer of another bank), enquires of another bank. Information given in response to such enquiries is given confidentially and is worded with scrupulous care, so as to disclose no more than the general position of the customer. Such cases are, it is presumed supported as permissible by reason of the implied consent of the customer, derived from evidence of a well-known practice among bankers and the circumstances giving rise to the enquiry.

In the recent case of *Sunderland* v. *Barclay's Bank* (*The Times*, 24th and 25th November, 1938) the bank was alleged by Mrs. Sunderland to have wrongfully disclosed to her husband that she was drawing cheques in favour of bookmakers. The disclosure followed the dishonour of a small cheque in favour of a dressmaker, the bank manager having clearly been influenced by the bookmakers' cheques in his decision to return the cheque. The wife as desired by her husband telephoned to the bank about the unpaid cheque and during the course of the conversation he took the telephone from his wife and expressed to the manager his dissatisfaction at what he called the bank's dis-

courteous conduct after which the disclosure took place. According to the manager, Mrs. Sunderland's final words to him were an invitation to tell her husband why the cheque had been dishonoured which was due to the fact that the balance at her credit fell short of the sum for which the cheque was drawn, coupled with the bookmakers' cheques. The court accepted the manager's evidence to the effect that he had his customer's permission to explain his action. Bankes, L. J., thought the banks' interests also required the disclosure to be made probably as a defence of their action in returning the cheque and to rebut any charge of discourtesy. The Judge also referred to the special relationship of husband and wife although it would certainly be inadvisable to talk more fully to a husband about his wife's account than in case of other people.

Only bare facts. In case the banker decides to give information regarding the state of his customer's account, he should first see that he adheres to facts only (see Appendix A, Form No. 17 (*a*)), as disclosed by the account and not to the rumours that may be afloat regarding the credit of his customer. Secondly, such information should be given only to a fellow banker, or to a person authorized by the customer to receive such information, in confidence and without prejudice. The information should be as far as possible very general so as to avoid any liability as to any claims for defamation or for fraudulent misrepresentation. A banker and his subordinates are, in this respect, in the same position as any other member of the community. In addition to the liability to the customer on account of unjustifiable disclosure of his account, the banker may make himself liable to the party to whom the information is given, to compensate him for the loss which the latter may suffer on account of having relied upon the information; provided it is proved that the banker gave the information knowing it to be false, or without having justifiable reason to believe it to be true. For instance, if with a view to oblige his customer, the banker, knowing fully well that his customer is in financial difficulties, gives a very favourable report on him to a person, who, relying on the report, extends credit to the customers and loses money, the banker will be liable to compensate that person for the loss he suffers. However, no action will lie against the banker for negligently making a false statement on the ground that there being no contractual relationship between the banker and a non-customer making the inquiry, the former owes no duty to the latter not to be negligent. On the other hand, if he speaks too unfavourably, an action for libel may be brought against him by the customer (Law of Banking by R. S. T. Chorley, 1938, p. 202).

In England, in order to hold a banker liable for damages for false and fraudulent representations as to the credit or financial position of an individual or concern, the representations must be in writing and signed by the banker. The signature of an employee, say a manager, is not sufficient to support an action against the bank. This is the effect of Lord Tenterden's Act (9 Geo. IV, c, 14). The Act, however, will not apply if the action is not one based upon tort for a fraudulent representation but is founded, say, upon negligence or breach of duty; even if such an action involves innocent representations on the part of a banker as to the credit of a third party, Tenterden's Act will have no application (*Banberry* v. *The Bank of Montreal* (1918), A.C. 626). To bring themselves within the operation of Tenterden's Act it is the practice of bankers in England not to sign letters and memoranda in which confidential reports are given as to the credit of their customers. This omission would only assist the banker within the limits mentioned and no further and consequently no pro-

tection can be gained in the absence of his signature on the report in cases in which he is sued on other grounds.

With a view to give only such information as is absolutely necessary while returning cheques drawn upon them unpaid, bankers generally use the following abbreviation :—" N/S " (not sufficient funds) or " R/D " (refer to drawer) ; Markings to the same effect are : " E. N. C." (effects not cleared) ; " N. E." (no effects), etc.

IV. UNREMUNERATIVE ACCOUNTS—*Incidental charges.* Another important special feature of this relationship, is that as long as the relation of banker and customer exists, the banker has the right to claim incidental charges. In England and in some other countries, if a customer is unable to keep a remunerative credit balance, he is required either to pay a certain sum per year, or a certain percentage, say ½ to ¼ percent, on the turnover of his account during the year. In India, bankers charge Re. 1 to Rs. 3 on over-drawn accounts per half year, but such charges do not contribute an appreciable amount to their profits. The chief reason for this distinction is, that in England the customers make use of cheques much more freely than they do in India, hence the trouble to which bankers in India are put is comparatively less than that experienced by bankers in England. It may also be due to the fact that banks in India, desiring to encourage the opening of current accounts, either make no charge or make only a nominal one.

V. TO CHARGE COMPOUND INTEREST.—The relationship also implies payment of interest with half yearly rests. In the absence of an express or implied agreement to the contrary, only simple interest is allowed on debts due to persons other than bankers, but as it is the practice of bankers to charge interest every half year, they can charge compound interest unless there is an agreement to the contrary. However, some bankers charge interest on over-drawn accounts at the end of every quarter or every month. This can be justified only if the customer has agreed to pay interest quarterly or monthly, otherwise the banker is not entitled to do so.

VI. LAW OF LIMITATION AND DEPOSITS.—The last, though not the least important, feature of this relationship is that, even if three years pass without the customer drawing any money or receiving interest on his balance, or receiving an acknowledgment of the debt from his banker, the debt does not become time-barred. This feature, distinguishing between debts due from bankers to their customers and the ordinary commercial debts, is the result of the decision in *Joachimson* v. *The Swiss Bank Corporation* (1921), 3 K.B. 110. The facts of the case were :—A partnership having been dissolved by death on 1st August, 1914, the question arose, whether the sum of £2,321 standing to the firm's credit on current account at that date, no demand for the payment having been made, constituted at that time an immediately recoverable debt affording a cause of action to the firm for money had and received. The opinion of the court, as enunciated by Bankes, L. J., was " We all think a demand is necessary". This ruling has changed entirely the law on the subject, according to which in the case of a promise to pay on demand no demand was considered necessary, and therefore, the period of limitation was regarded to have commenced from the date of the debt and not from the date of the demand. It is for this reason that Mr. Justice Roche, a commercial lawyer and a judge of great repute who tried the above case in the first Court, decided that the amount was immediately recoverable and could be sued for without any previous demand. The judgment of Bankes, L. J. referred to above will have

an important effect upon the dormant balances lying with bankers for a long time, as it will no longer be possible for them to claim the benefit of the limitation period from the time of the receipt of those deposits. The law of British India on this subject, is contained in article 60 of the Indian Limitation Act, 1908, which provides a period of three years from the time when the demand is made by the customer.

A CURIOUS CASE—A curious case arose in England recently having a bearing on the question of limitation in a suit to recover amounts deposited with banks. In 1866 one F deposited a large sum with the defendant bank on the terms that he could withdraw it at any time on giving 14 days' notice. F died and 61 years thereafter, a descendant of F came across the deposit receipt amongst F's papers and filed a suit thereon against the bank. In this suit no question of limitation arose because the bank could not, after the lapse of this extraordinary time, prove any demand on the part of F. However, fortunately for the Bank, the court came to the conclusion that an inference of repayment could fairly be raised in the circumstances of the case, being influenced to a certain extent by the absence of all relevant entries regarding the deposit in the current records of the Bank. The suit was therefore dismissed (*Douglass* v. *Lloyd's Bank, Ltd.*, 34 Com. Ca. 263).

DEPOSIT ACCOUNTS— With regard to the effect of the Law of Limitation in the case of fixed deposits, the opinion is divided. According to some, no distinction should be made between fixed and current deposits, *i.e.*, in the case of fixed deposits also, the period of limitation will not run until the customer has made a demand upon the banker asking him to pay the deposit. According to others, if the customer has given notice to the banker to withdraw the deposits after a specified time, the limitation period will begin to run from the expiry of the specified time. The latter view appears to be sound. However, if the return of the deposit receipt, which may take the form of a mere receipt or a voucher, is made a condition precedent to the withdrawal of the money, its return fixes the starting point of the period of limitation. Time does not begin to run until demand is made even in the case of valuables left for safe custody.

OVERDRAFTS —But in case of an overdraft granted by a banker to his customer, the period will run from the time the overdraft is made use of unless it is extended by an acknowledgment of the debt in writing signed by the debtor or his agent, or part payment of the debt has been made and the fact of such payment appears in the handwriting of the debtor or his agent. The reason is, that an overdraft granted by a banker is a loan and not money deposited with the banker (*Motigorni* v. *Naranji*, 29 Bom. L.R. 423).

CHAPTER III

BANKING ORGANIZATIONS

DECLINE OF PRIVATE BANKS—"Fit though few," is as true in banking organization as in any other sphere of human activity. Instead of having many petty institutions, each one independent of the other, it is better to have the banking business of a great country concentrated in the hands of a small number of banks, with many branches. No doubt, banking business may be carried on by individuals, by partnerships, sometimes called firms, and corporations even in these days of large scale business. But individuals carrying on the business of banking in the proper sense of the word, are, at present, in a negligible minority and even the private banks are steadily diminishing in importance, as is evident from the following table:—

Banks in England and Wales.

Year.	Number of Joint-stock banks in England and Wales (excluding the Bank of England)	Deposits (in millions of £s)	Number of Private banks (firms)	Deposits (in millions of £s)
1895	98	455	38	70
1905	59	627	12	27
1915	37	992	7	33
1921	20	1974	5	48
1924	18	1813	4	30
1927	17	1892	4	30
1930	16	1976	4	26
1939	17	2581.7	4	30.5
1944	9	3995	4	121.6

THE INDIGENOUS BANKER AND HIS FUTURE IN INDIA—Unfortunately similar statistics regarding Private Banks in India are not available. Still, it may be presumed that the private banker, if not yet extinct, is apparently doomed to recede into the background with the rapid progress of the joint stock banks, owing to their greater stability, higher competitive power, and more scientific management. And yet, the indigenous banker has a role to play. He may perhaps continue to supply the missing link between the central banking structure of the country and rural financing. What action the Reserve Bank of India proposes to take under the statutory obligation laid on it, in this respect, under section 55(1) A of the Reserve Bank of India Act, 1934 (II of 1934), and what recognition the indigenous banker will be accorded as a vital part of the banking organism of the country, are matters which must be settled in the immediate future. The probabilities are, that the indigenous banker may yet live, and live to serve.

The development of joint stock commercial banks in some of the leading countries may be seen by the following figures given for the year 1936.

Country	No. of Bank Offices	Capital and Reserve (in millions of £s)	Deposits (in millions of £s)
U. States	15,628	970	11,049
England & Wales	10,089	138.5	2,329
Japan	4,078	168.5	1,108
Canada	3,331	36	559
India*	2,074	25 (excluding Exchange Banks)	217.2

* The figures of banking offices and deposits are those of the banks having paid up capital and reserves of Rs. 50,000 or over at the end of 1940 and include the deposits of the Indian branches of Exchange Banks.

Reasons for the Dwindling Importance of Private Banks.

From the above two tables it is quite clear that the joint stock principle is being increasingly applied to the banking business in India, as well as in most of the important countries of the world. Why is the private bank on its last legs, while the joint stock bank is forging ahead with rapid strides? The reasons are not far to seek. Firstly, production on large scale has led to a demand for credit facilities for very large amounts, which the private banks, with comparatively limited resources, are generally unable to meet. The capital of a private bank is bound to be comparatively small, as it is limited to the amount subscribed by its partners, whose number cannot exceed ten (Indian Companies Act, 1913 (VII of 1913), section 4). The joint stock banks on the other hand, can obtain large amounts of capital as there is no statutory restriction on the number of their shareholders, with the results that their shares can be issued in small denominations. The ability to divide the capital into shares of small denominations and the limitation of the liability of the shareholders to the face value of the shares purchased by them attract even persons of small means to invest their savings in them. In the case of private banks, however, only persons who are in a position to invest fairly large amounts, can become their members.

Liability of Partners in India and England—Moreover, as the liability of the partners of a firm is unlimited, persons unable to take an active part in the business of a private bank, are, except in very rare cases, reluctant to become partners of such concerns. In India, the principle, which, before the passing of the Indian Partnership Act, 1932, governed the liability of a partner in respect of the debts of his firm, is contained in section 43 of the Indian Contract Act, 1872 (IX of 1872) the relevant portion of which stands thus :—

> When two or more persons make a joint promise, the promisee, may, in the absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise.

The rule of bankruptcy practice as to the distribution of partnership property in payment of joint and separate debts however, stands on a slightly different footing. Where there are joint debts due from a firm, and also separate debts due from any partner, section 49 of the Indian Partnership Act,

1932 lays down that the property of the firm shall be applied in the first instance in payment of the debts of the firm, and if there is any surplus, then the share of each partner shall be applied in payment of his separate debts or paid to him. The separate property of any partner shall be applied first in the payment of his separate debts, and the surplus (if any) in the payment of the debts of the firm. The rule is adopted in the Indian Insolvency Acts, section 49 (4) of the Presidency Towns Insolvency Act, 1901 and section 61(4) of the Provincial Insolvency Act, 1907. In England, according to the Limited Partnership Act, 1907, however, the liability of one or more members of a firm can be limited to the amount of the capital he or they may have contributed to the firm, provided that there is at least one general or unlimited partner, who is liable to the full extent of his separate estate for the debts of the partnership. A limited partner is debarred from taking part in the management of the firm, or he will become liable as a general partner for all debts and obligations of the firm contracted, while he so takes part in the management. He may, however, occasionally inspect the account-books of the firm and advise his other partner or partners. A dormant partner, or a person who is not known to be a partner, need not give public notice of retirement, although he is liable for debts and obligations incurred by the firm while he was a partner. He cannot be held liable, however, for debts contracted or obligations incurred after his retirement, for the simple reason that he was never known to be a partner.

NEED FOR LARGE CAPITAL—Secondly, banking is a very delicate business; the whole of its structure rests on the foundation of the confidence of depositors, and once that is shaken, the entire fabric is liable to crash to pieces. The large subscribed capital of joint stock banks and the publicity which they give to their accounts go a long way in inspiring and strengthening the confidence of the public in them; thus, they are able to attract much larger amounts as deposits than the private banks, whose prosperity, to a large extent, depends upon their local reputation and support and who, unlike the modern joint stock bank, cannot have a nation-wide appeal in their search for capital, resources, or clientele.

PROPORTIONATELY SMALLER LOSSES OF BIGGER BANKS—Thirdly, the bigger the bank, the more effectively the law of averages applies to its transactions particularly to its losses. The larger the total assets, the smaller is likely to be the proportion of losses; and consequently, greater is the security for depositors of big joint stock banks.

ABILITY TO GRANT CREDITS FOR LARGE AMOUNTS—Fourthly, joint stock banks, with their large working capital, are in a position to meet the requirements of customers, who, sometimes, keep large balances and, at other times, need overdraft facilities for large amounts, which a private bank with limited resources cannot provide. Transactions of such a customer may sometimes upset the business of a private bank, but in the case of a joint stock bank having many big customers, the law of averages applies. This has, however, led to the concentration of capital in a few hands, a tendency which is visible in almost every department of commercial activity.

LIMITATIONS OF AMALGAMATION—In spite of these and other advantages, namely lower administrative costs, greater scope for concerted action, and a greater degree of efficiency and uniformity, the tendency towards amalgamation is not an unmixed blessing, as, according to some; it may lead to the entire banking business of a country becoming the monopoly of one or two banks. However, if the movement towards concentration of this business is not carried

beyond reasonable limits, it strengthens the position of the amalgamated institutions. On the other hand, amalgamation in banking business may make competition in banking keener than ever, since it will be the aim of the larger banks to be equally represented throughout the country, however small the place and few the opportunities for banking expansion may be. The safety of an individual bank is likely to become linked with the safety and prosperity of the system as a whole. A member of an amalgamation of banks, though individually sound enough, cannot but succumb, once it becomes known that the amalgamated concern is a part of a chain that has become weakened to the breaking point. In such a case when the head office closes, the branches must also automatically pull down their shutters, though many of them may be solvent, so far as their local business is concerned. An independent banking institution, when entering into affliation with a group or chain, should consider most carefully whether such affiliation will result in increased strength or be a source of weakness. As a result of the inquiry into the banking amalgamations made in 1924, the leading banks of England and Wales gave an undertaking to the British Treasury, that no further amalgamation would be given effect to without the prior consent of the Treasury.

The Hindu Joint Family System.

Despite the development of the joint stock banks, even today, except in our large cities, banking business is largely carried on by private banks which are mostly owned by Hindu families and not by partnerships. The most prominent among these are the Vaishya, the Jain and the Marwari families scattered all over India ; the Nattukottai Chettis in the Presidency of Madras and Burma the Khatris and the Auroras in the Punjab, and the Multanies in Sind, Gujarat, the North-West Frontier and the United Provinces. The system bears striking resemblance to our modern joint stock banks in more than one respect. Its life is institutional, and not personal, and as such, it enjoys unbroken continuity it has a distinct existence in law and the going out or the coming in of persons makes not the slightest difference to the continuity of that body, just as changes in the staff of a banking corporation do not affect its existence. It is represented by managers (*kartas*) who carry on the business of the families. All the individual members of the family exist only in the genealogical tree and never in actual life. Generally, it is the male line that is taken into account.

Advantages and shortcomings—The Joint Hindu family system enables the capital of a family to remain undivided, which helps to inspire public confidence in it. Moreover, its members can keep in close touch and maintain personal relations with their customers, and, in this respect, they certainly possess an advantage over the joint stock banks, carrying on their business as public companies. Nevertheless, it is regrettable that most of the Indian private banks, unlike those in England and other occidental countries, have not yet adapted themselves to modern requirements. As an illustration it may be mentioned that, until recently, only a few private bankers in India issued printed cheque forms, probably on the ground of economy. Although their time-honoured hundi system is still in existence, it has to be confessed that it cannot stand any comparison with the up-to-date cheque system of the West. The private banks in England, on the other hand, supply their customers with printed cheque books and render such other services as are performed by the joint stock banks. Further, although not legally bound to do so, the English private banks, with a view to inspire public confidence, issue balance sheets duly audited by well known accountants.

NUMBER OF PARTNERS IN A PRIVATE BANK, IN ENGLAND—In England, between 1708, when the monopoly of note issue as far as joint stock banks were concerned was granted to the Bank of England, and the passing of the joint Stock Companies Act of 1857, banking partnerships were allowed only when the number of partners did not exceed six. The Act of 1857 raised this number to *ten at which figure, it stands even today but, the increase did not affect the* note-issuing banks, which continued to be governed by the provisions of the Bank Charter Act of 1844.

NUMBER OF PARTNERS IN A PRIVATE BANK, IN INDIA—As in England, banking firms in India cannot have more than ten partners (the Indian Companies Act, 1913 (VII of 1913), section 4(1)). Clause 3 *ibid* makes an exception in favour of a joint family and lays down that when two or more families form a partnership, in computing the number of persons, for the purpose of this section, minor members of such families shall be excluded. According to clause 4 of the said section, every member of a company association, or partnership carrying on business in contravention of this section, shall be personally liable for all liabilities incurred in such business. Clause 5 provides punishment for contravention of this section by means of fine not exceeding one thousand rupees.

PRIVATE ENGLISH BANKS TO SUPPLY CERTAIN INFORMATION—Every person carrying on the business of banking in England and Wales is required to make within the first sixteen days of January, an annual return to the Commissioners of Stamps and Taxes, showing his name, residence, occupation and the name under which he carries on his business and of every place where he carries on such business (section 21 of Peel's Act of 1844).

Publication. The above information is usually published, under the authority of the Commissioners of Stamps and Taxes, in newspapers circulating in the locality, or localities, in which the private bank carries on its business. The object of this publicity is to keep persons dealing with the bank informed of its position. In this country, private bankers are not required to supply any such information, but it is nevertheless, very desirable that statements showing their financial position, should be regularly issued by them and published in the newspapers of the part or parts of the country in which they carry on their business.

WRITTEN PARTNERSHIP AGREEMENT—ITS ADVANTAGES—Where the business is to be carried on by more than one person, the terms of the agreement between the partners are stated in the partnership agreement. Sometimes, on account of the most friendly relations existing between the partners at the time of the starting of the business no proper agreement is made, but generally, the absence of a proper agreement in writing has caused more harm than good. There are certain distinct advantages in putting the terms in black and white. Firstly, there may be a genuine misunderstanding of one of more of the terms by one or the other of the partners. When the terms are reduced to writing before the commencement of a business, all the partners can read them carefully at their leisure, understand their implications, and in case of any misunderstanding, it can be easily removed, for, during the initial stages, the relations between the partners are cordial and the spirit of give and take can easily set matters right. Secondly, the effect of a proposed change, if any is not fully measured in terms of money before the business has been in existence for some time, and therefore, the question of a particular partner benefiting much more than the other or others by the change, either in the terms, or in their interpre-

tation, does not arise at that time. Thirdly, in case of any future dispute between the partners, the written forms enable the differences to be settled without any prolonged litigation, which is otherwise bound to result in long litigation owing to attempts of different partners to give different versions of the terms of the partnership.

MAIN CLAUSES OF THE PARTNERSHIP AGREEMENT—The partnership agreement should state clearly the terms agreed upon, as regards the persons who are to form the partnership, its capital, and in what proportion it is to be subscribed by the partners, the rate of interest, if any, to be allowed on the partners' capital, division of profits and losses, and restrictions, if any, to be placed on the powers of one or more of the partners. It is also very desirable to have, in the partnership agreement, provisions for contingencies such as retirement, death, and admission of partners as well as for dissolution of the partnership.

IMPORTANT PRINCIPLES OF THE LAW OF PARTNERSHIP—We give below a few general principles of the law of partnership, so far as they govern the relations between the partners of a banking firm and its customers.

1. PARTNER AS AGENT OF FIRM.—A partner is an agent of the firm for the purposes of the business of the firm (section 18 of the Indian Partnership Act, 1932 (IX of 1932)); but in order to bind a firm, an act done, or an instrument executed by a partner or other person on behalf of the firm, should be done or executed in the firm's name, or in any other manner expressing or implying an intention to bind the firm (section 22, *ibid.*) ; and further, the act must be such as is done to carry on, in the usual way, business of the kind carried on by the firm (section 19, *ibid.*). If a partner, in carrying on a partnership business in the usual way, does something, he thereby *prima facie* binds his firm. Suppose, for instance, Vaidya and Joshi are the two partners of a banking firm styled "Vaidya and Joshi"; Vaidya, in the ordinary course of the business of the firm, indorses a bill in the name of the firm and discounts it with Desai without Joshi's knowledge. If the bill is dishonoured, then, on account of Vaidya's indorsement on the bill being on behalf of the firm, both Vaidya and Joshi will be liable as members of the firm unless it can be proved that the holder of the bill knew that the transaction leading to the issue of the bill had nothing to do with the business of the firm. Similarly, if a sum of money is received by Joshi on behalf of the firm without Vaidya's knowledge and is appropriated by the former to his own use, the partnership will be debarred from disowning its receipt.

Exceptions to the above rule. There is, however, an exception to this rule. The partners may, by agreement between themselves, restrict the power of any of their numbers to bind the firm and a third party, having knowledge of such restrictions on the authority of a partner, cannot bind the firm by the acts of such partners (section 20 of the Indian Partnership Act, 1932 (IX of 1932)). For example, in the above case, Joshi alone may be authorised to endorse bills in the name of the firm. Then if such a limitation of Vaidya's authority is known to Desai, who discounts the bill with Vaidya's endorsement on behalf of the firm, it will bind Vaidya alone and not the firm (*Collen* v. *Wright* (1857), 7 E. & B. 301; 26 L.J.Q.B. 14). But where the authority of a partner is so limited by an agreement, which fact is not known to third parties dealing with the firm, the firm cannot escape liability. In order to bind the firm the act done by a partner on behalf of the firm must, however, in each case, be within the scope of the ordinary business of the firm. Thus, in the case of a banking firm, for an act or transaction which is entirely outside the scope of its business,

the partner concerned and not the firm is liable. For example, in the instance given in the preceding paragraph, if Vaidya anticipating a rise in the price of cotton, makes a forward purchase of 500 bales of cotton on behalf of his firm, the firm will not be liable for the loss in case there is a fall in its price, on the ground that speculation in cotton is no part of the business of a banking concern.

2. LIABILITY OF OUTGOING AND INCOMING PARTNERS—Every partner is liable for all debts and obligations incurred, while he is a partner, in the usual course of business, by or on behalf of the said partnership; but a person, who is admitted as a partner into an existing firm, does not thereby become liable to the creditors of such a firm for anything done before he became a partner (section 31 of the Indian Partnership Act, 1932) unless he expressly assumes liability for previous contracts. After his retirement or death, a partner, or his estate, does not thereby cease to be liable for debts or obligations incurred by the firm before his retirement or death, unless its creditors or depositors expressly release the outgoing or deceased partner, or until their deposits are paid or renewed with the newly constituted firm (section 32, *ibid.*).

An illustration. Suppose, for instance, that Mr. J. C. Bose deposits Rs. 500 for one year with a banking firm named Mukerjee & Co.; and Mr. P. Mukerjee, a partner of the firm, dies after six months. If on the maturity of his deposit Mr. Bose either renews his deposit, or transfers it to his current account, then Mr. P. Mukerjee's estate will not be liable to Mr. Bose in case of the failure of the firm, if Mr. Bose is aware of Mr. Mukerjee's death at the time of the renewal or transfer of the deposit. The liability will be extinguished on the ground that the renewal or transfer of the deposit will be treated as a new contract, with which Mr. Mukerjee's estate has nothing to do. In such a case, the old contract is supposed to be replaced by a new one. The principles stated above govern the liability of partners for debts and obligations of the firm, whereas that given below relates to compensation in case of any loss, incurred as a result of negligence or fraud on the part of a partner in the ordinary course of the business of the firm.

3. LIABILITY IN CASE OF NEGLIGENCE OR FRAUD OF A CO-PARTNER—"Where, by the wrongful act or omission of a partner acting in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefor to the same extent as the partner" (section 26 of the Indian Partnership Act, 1932 (IX of 1932)). This requires that the wrongful act of omission complained of, must either be one committed in the ordinary course of the business of the firm, or be one which is committed with the authority of his other partners. The fraud complained of must be one committed in the ordinary course of the partnership business. For example, if a partner of a banking firm advised one of its customers to invest money in certain securities, as a result of which the latter suffers a loss, the firm will not be liable on the ground that it is not in the ordinary course of banking business to advise customers as to how they should invest their funds (*Banberry* v. *Bank of Montreal*, [1918] A.C. 626). The following extract from the judgment in *Bishop* v. *Countess of Jersey* (1854), 2 Drew, 143, at p. 162; 23 L.J. Ch. 483, indicates the position clearly.—

"It is notorious that their practice is not to act for their customers as money scriveners or agents generally to find investments for their money, but if a customer sends them with a power of attorney, a letter of instructions,

directing them to sell a particular sum of stock, they will do so ; or if the customer wishes a particular investment in the funds, and directs them to lay out his money in the purchase of particular stock, and debit him with the amount, they will do so; and when they do, be it observed, they do so ordinarily without a cheque, but on a particular letter of instructions . . . . It is not within the scope of the business of bankers to seek or make investments generally for their customers." However, if a partner of a banking firm receives money from a client of the firm, with instructions to purchase certain specified securities on his behalf, but invests it in some other securities, the firm will be liable to make good such loss as the customer may thereby suffer.

Banking Companies or Corporations.

The business of banking can also be carried on through the medium of joint stock companies or corporations.

BANKS FORMED UNDER SPECIAL ACTS OR ROYAL CHARTERS.—Such corporations may be formed in pursuance of a special Act of Parliament, or of the Indian legislature, or of Royal Charters or Letters Patent, or may be registered under the Indian Companies Act, 1913 (VII of 1913). In modern times very few companies are created by Royal Charters or Letters Patent. Royal Charters used to be granted by the sovereign authority to corporations defining and limiting their rights, privileges, and obligations, as also the localities in which they were to be exercised. The East India Company was a corporation of this kind. Letters Patent are letters addressed by the sovereign "to all whom these presents shall come" reciting the grant of monopoly . . . . to the patentee. Instances of companies created by special Acts of Legislature—not by virtue of the provisions of the Companies Acts—are the Bank of England, which was created by an Act of the British Parliament ; the Imperial Bank of India and the Reserve Bank of India, which were created by the Imperial Bank of India Act, 1920 (XLVII of 1920), and the Reserve Bank of India Act, 1934 (II of 1934.) Although the liability of the shareholders of the Imperial Bank of India and those of the Reserve Bank of India, like that of the shareholders of any other joint stock bank registered under the Indian Companies Act, 1913, *supra*, is limited, the word "limited" does not form a part of their names, as it does in the case of banks constituted under the latter Act.

BANKS REGISTERED UNDER THE INDIAN COMPANIES ACT—As already explained, the private bank is gradually receding into the background and the joint stock bank is coming to the forefront as the most popular and up-to-date form of banking organization. The leading joint stock banks registered under the Indian Companies Act, 1913 (VII of 1913) are given below in chronological order :—

(1) The Allahabad Bank Limited.
(2) The Punjab National Bank Limited.
(3) The Bank of India Limited.
(4) The Central Bank of India Limited.
(5) The Indian Bank Limited.

As most of our joint stock banks belong to this class, it is necessary to deal at some length with the principles of law and practice which govern such banks.

The Indian Companies Act, 1913, as amended (XXII of 1936), is applicable alike to joint stock banks and to other companies registered under it. However, there are certain provisions of this Act which distinguish banking companies from other companies.

Main Provisions of the Indian Companies Act Distinguishing Banks from other Companies.

MAXIMUM NUMBER OF PARTNERS IN A BANKING FIRM—We have already referred to the distinction, between banks and other companies made by section 4(1) of the Indian Companies Act, 1913 (VII of 1913) as amended Act XXII of 1936 which lays down that if more than ten partners wish to carry on banking business, they must form themselves into a company to be registered under the said Act; whereas in the case of other kinds of business, as many as twenty partners can carry on their business as a firm. This distinction is largely due to the desirability of banking business being carried on largely in the form of registered joint stock banks.

PROHIBITION AGAINST EMPLOYMENT OF MANAGING AGENT—Section 277H prohibits a banking company after the expiry of two years from the commencement of the Indian Companies (Amendment) Act, 1936 (XXII of 1936) from employing a managing agent other than a banking company for its management. This prohibition extends to companies already in existence at the time of the commencement of the Act.

MINIMUM CAPITAL REQUIREMENT—The Indian Companies (Amendment) Act, 1913 (VII of 1913), section 277 I requires that no banking company incorporated under the Act, shall commence business unless shares have been allotted to an amount sufficient to yield a sum of at least fifty thousand rupees as working capital and unless a declaration duly verified by an affidavit signed by the directors and the manager that such a sum has been raised has been filed with the Registrar.

RESERVE FUND—Section 277K, read with section 277L (3), of the Indian Companies Act, 1913 (VII of 1913), lays down that every banking company other than a scheduled bank as defined in section 2 (e) of the Reserve Bank of India Act, 1934 (II of 1934) shall out of the declared profits of each year and before any dividend is paid, transfer a sum equivalent to not less than twenty per cent. of such profits to the reserve fund until the amount of the said fund is equal to its paid up capital. Sub-section (3) of the same section directs that the amount standing to the credit of the reserve fund thus created shall be invested in Government securities or in securities mentioned in section 20 of the Indian Trusts Act, 1882 (II of 1882) or in a special account to be opened by the company in a scheduled bank as defined in section 2 (e) of the Reserve Bank of India Act, 1934 (II of 1934).

CASH RESERVE Section 277L of the Indian Companies Act, 1913 (VII of 1913) imposes a duty on every such banking company as is referred to in the foregoing paragraph, to maintain by way of cash reserve in cash a sum equivalent to at least one and a half per cent. of its time liabilities and five per cent. of its demand liabilities (*i.e.*, liability which must be met on demand), and to file with the Registrar before the tenth day of every month, a statement of the amount so held on the Friday of each week of the preceding month, with particulars of the time and demand liabilities of each such day.

TO SUBMIT HALF-YEARLY STATEMENTS—Section 136, sub-section (1) of the Indian Companies Act, 1913 (VII of 1913) lays down :—

Every Company being a limited banking company or an insurance company or deposit provident or benefit society shall, before it commences business, and also on the first Monday in February and the first Monday in August in every

year during which it carries on business, make a statement in the form marked G [see Appendix A, Form No. 1 *post*] in the Third Schedule or as near thereto as circumstances will admit.

In case a company fails to comply with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues; and every officer of the company who knowingly and wilfully authorizes or permits the default, shall be liable to the like penalty.

COPIES TO BE EXHIBITED IN CONSPICUOUS PLACES—It is also provided by s.s. (2) of s. 136 of the Indian Companies Act, 1913, as amended by the Indian Companies (Amendment) Act, 1936 (XXII of 1936) that the statement referred to above, together with a copy of the last audited balance sheet laid before the members of the company, should not only be submitted to the Registrar of Joint Stock Companies of the province in which the head office of the company is situated, but copies thereof must be continuously exhibited in conspicuous places in the head office and all the branches of a bank. By these means, persons dealing with a joint stock bank are enabled to have information as to its assets and liabilities and can form a fairly correct opinion about its financial position. The same section further lays down that every member and every creditor of a bank is entitled to get a copy of the statement on payment of a sum not exceeding eight annas.

NEED FOR PUBLICITY—It will thus be seen that a banking company has to make and publish a statement in a prescribed form twice a year. This can firstly be accounted for by the fact that a banking company, receiving deposits of money from its customers, must keep them informed with regard to its financial position with a view to inspire public confidence, which is not so necessary in the case of a company carrying on other kinds of business. That the banks themselves, including even some private banks, have awakened to the advantages of giving publicity to their accounts is evidenced by the fact, that joint stock banks in some countries have begun to publish their accounts once a month instead of twice a year and some of the private banks, which are not required by law to file any statement, are issuing duly audited statements of account just like the joint stock banks. Secondly, greater publicity of the accounts of a banking company is required because the failure of a bank may shake public confidence in other banks to such an extent that the merest whisper or the vaguest rumour may be enough to start virulent raids on them, although they may be carrying on their business on fairly sound lines. Thirdly, in view of the very intimate relationship between credit organization and trading and industrial concerns, it can easily be imagined what serious consequences can result from bank failures.

AUTHENTICATION OF THE STATEMENT—According to section 133 of the Indian Companies Act, 1913 (VII of 1913), as amended by the Amendment Act 1936 (XXII of 1936) the balance sheet and profit and loss account of a banking company should be signed by the manager or managing agent (if any) and by at least three directors where there are more than three, and by all where there are not more than three directors. In the case of other companies, the signatures of only two directors are considered sufficient for such purposes and where a company has only one director, his signature and that of the manager or managing agent (if any) is regarded as sufficient. In case of failure to comply with this requirement, there shall be sub-joined to the balance sheet a statement signed by directors or director, explaining the reason for non-compliance with this provision of the law.

APPLICATION TO GOVERNMENT FOR INVESTIGATION—Another feature which distinguishes a bank from other companies, is that under section 138 of the Indian Companies Act, 1913 (VII of 1913) a local government can order investigation into the affairs of a banking company on the application of share holders holding not less than one-fifth of the shares issued, as against the minimum of one-tenth of the shares issued in the case of non-banking companies. The need for this distinction can be well understood, when it is known that a banking company is far more susceptible to loss of public confidence than other companies, if its credit is allowed to be assailed. The requirement that an application for the investigation of the affairs of a bank must be supported by the holders of at least one fifth of the subscribed capital, acts as a check on frivolous applications promoted by petty jealousies, or malice, on the part of a few shareholders. This does not, however, bar the Registrar of Joint Stock Companies from calling, under section 137, *ibid.*, for such additional information as he may require or from making a report to the local government for investigation into its affairs.

ACCOUNTS OF BRANCHES BEYOND BRITISH INDIA—The next distinctive feature of the company law which applies to joint stock banks is that made by sub-section (3) of section 145 of the Indian Companies Act, 1913 (VII of 1913). Where a banking company has branches, carrying on business beyond the limits of India, it is sufficient compliance with the requirements of that section, if the auditor is allowed access to such copies and extracts taken from the books of account of the branch as have been transmitted to the head office of the company in British India, whereas in all other cases, the section requires the production of the original books of accounts for inspection by the auditors.

NOT TO CREATE ANY CHARGE UPON UNPAID CAPITAL—Section 277J of the Indian Companies Act, 1913 (VII of 1913) prohibits a banking company from creating any charge upon any unpaid capital of the company and if created, declares it to be invalid.

NO NON-BANKING SUBSIDIARY COMPANIES—Section 277M of the Indian Companies Act, 1913 (VII of 1913) states that a banking company shall not form or hold shares in any subsidiary company, except a subsidiary company of its own, formed for the purpose of undertaking and executing trusts, undertaking the administration of estates as executor, trustee or otherwise and such other purposes set forth in section 277F, *ibid.*, as are incidental to the business of accepting deposits of money on current account or otherwise.

STAY OF PROCEEDINGS AGAINST A BANK—Section 277N of the Indian Companies Act, 1913 (VII of 1913), confers power on the Court to make an order staying the commencement or continuance of all actions and proceedings against a banking company, which is temporarily unable to meet its obligations, if it is satisfied from a report of the Registrar that the circumstances justify the intervention.

Form of the Balance Sheet.

SUGGESTIONS ACCEPTED—In the first two editions of this book, suggestions were offered for the improvement of the form of the balance sheet of banking companies, and we are glad to find that the Indian Companies (Amendment) Act, 1936 (XXII of 1936) has incorporated most of them. (See Form F in the Third Schedule).

BAD AND DOUBTFUL DEBTS—It was common practice of banks to write off bad debts, and make no mention of them in the balance sheet. And if they were not written off, a special provision was made out of profits or reserve fund to square off the bad or doubtful debts. The procedure was held illegal by the Bombay High Court in 1927 (*D. D. Shamdasani* v. *Pochkhanawalla*, 29 Bom. L. R. 722) which held, that as long as the bad debts were not actually expunged, a provision must be shown on the other side of the balance sheet as " Provision for Bad and Doubtful Debts." As a result of the Court's observations in the case the following notification in modification of the requirements of form F under section 132 (2) of the Indian Companies Act, 1913 (VII of 1913) was issued by the Government of India, Department of Commerce, on 29th March, 1927, as follows :—

" In the column headed ' Capital and Liabilities ' to the sub-head ' Provision for Bad and Doubtful Debts ' the words and brackets " (in the case of companies other than banks) shall be added."

" In the columns headed ' Property and Assets ' in the sub-head ' Book Debts ', after the words ' Book Debts ' the words and brackets " (other than bad and doubtful debts of a bank for which provision has been made to the satisfaction of the auditors) shall de added."

BANKS MUST DISCLOSE DOUBTFUL DEBTS—In the second edition of this book we expressed our doubt as to the advisability of the changes made by the above notification and the legislature is to be congratulated on having now done away with the provisions permitting banks not to disclose bad and doubtful debts in their balance sheets (Appendix A, Form No. 2), if provision for them had been made to the satisfaction of the auditors.

CONCESSIONS TO PRIVATE COMPANIES—Joint stock banks may be registered either as public, or private companies. Private companies have the following advantages over public companies :—

(1) Private companies need not file a statement in lieu of prospectus.

(2) They can commence business and exercise borrowing powers as soon as they are incorporated and need not comply with the other requirements enforced upon public companies for the commencement of business.

(3) They are not required to forward a statement in the form of a balance sheet to the Registrar of Joint Stock Companies.

(4) No reports are required to be filed by them unlike in the case of public companies.

(5) Their accounts need not be audited and certified by Registered Accountants.

(6) The requirements as to " minimum subscription " do not apply to them.

(7) They are free from the requirements in regard to the appointment of directors by the articles of association, the consent of the directors to act as such and the conditions requiring the directors to take up and pay for the qualification shares, if any, as is necessary in the case of public companies.

(8) They need not disclose their financial position to their rivals, as they are not compelled by law to file their annual balance sheets with the Registrar

of Joint-stock Companies though they are required to disclose the amount of their paid-up capital and indebtedness secured by mortgages and charges.

(9) They are not required to file the Statutory Report with the Registrar of Joint Stock Companies.

(10) The provisions of section 79 of the Indian Companies Act as amended by the Indian Companies (Amendment) Act, 1936, as regards meetings and votes, do not apply to private companies.

(11) The provision as regards retirement of directors by rotation, does not apply to them.

(12) The provisions prohibiting loans to directors or to managing agents do not apply to private companies.

(13) The provisions as regards the duration of managing agency, or the remuneration of managing agents, are not applicable to private companies.

(14) The provision laying down that the number of directors appointed by the managing agents not to exceed one-third of the total number of directors, does not apply to private companies.

RESTRICTIONS ON PRIVATE COMPANIES—They are, however, subjected to certain restrictions which make a private company a very unsuitable form of corporation for the purpose of carrying on banking business. The following are the restrictions put on private companies :—

(*a*) The right to transfer shares is limited.

(*b*) The number of members of a private company is limited to fifty, exclusive of persons who are in the employ of the company. Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this definition, be treated as a single member (the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

(*c*) Private companies are prohibited from inviting the public to subscribe to their shares, or take up their debentures.

Matters Pertaining to the Starting of New Banks.

We now pass on to the consideration of certain important questions which arise in connection with the promotion of new banks.

RESTRICTIONS REGARDING NAME—The law does not lay down any restriction as to the selection of the name of a company except, that firstly, it should not be similar to or identical with that of a company already in existence, unless the company in existence is in the course of being dissolved and signifies its consent in such manner as the Registrar of Joint Stock Companies requires; and secondly, a company shall not be registered by a name which contains any of the words " Crown," " Emperor ", " Empress ", " Empire ", " Imperial ", "King", "Queen", "Royal", "Federal", "State", "Reserve Bank", "Bank of Bengal", "Bank of Madras", "Bank of Bombay", or such other words as may suggest or are calculated to suggest, the patronage of His Majesty, or of any member of the Royal Family, or any connection with His Majesty's Government or any department thereof, except with the previous consent in writing of the Governor-General in Council. Nor, may any name contain the word " Municipal ", or " Chartered ", or any other word which suggests, or is calculated to suggest, connection with any Municipality or other local authority, or with any society or body incorporated by Royal Charter. The provision with regard to the use of terms "Federal", "State", "Reserve Bank", "Bank

of Bengal", "Bank of Madras", and "Bank of Bombay", however, does not apply to companies registered before the commencement of the Amendment Act of 1936 (section 11 (3) of the Indian Companies Act, 1913, as amended by the Amendment Act of 1936).

INCLUSION OF WORDS "BANK", "BANKER" OR "BANKING COMPANY" IN THE NAMES OF COMPANIES DOING BANKING BUSINESS—In the proposals submitted by the Reserve Bank of India for a special Bank Act it is suggested that after the expiry of two years from the commencement of the proposed Act, no company shall carry on the business of banking in British India unless it uses as part of its name at least one of the words 'bank', 'banker' or 'banking' and every company which uses as part of the name under which it carries on business any of the words 'bank', 'banker' or 'banking shall be deemed to be a banking company and shall be subject to the provisions of the proposed Act as such.

NO INJURY TO AN EXISTING COMPANY—As regards the first restriction, it may be mentioned that a mere similarity in name is not considered a sufficient ground for refusal to register it, provided the use of such a name does not injure the business of the existing firm or company. Thus, if the name of a proposed bank is similar to that of a company not engaged in banking business, there can be no objection to its registration as a bank on the ground merely that it bears a similar name.

A SUGGESTIVE NAME—Leaving aside the legal restrictions regarding the name, it is desirable that the name should not only be simple and easy to remember, but also indicative of the particular branch of the business in which the proposed bank is going to take a predominant interest. For instance, if the proposed bank is started to finance industries, the word "industrial" should form a part of its name.

CAPITAL—Section 277(I) of the Indian Companies (Amendment) Act, 1936, until the amendment of the 7th March 1944 referred to below, contained only the undermentioned provision in regard to the capital structure of a banking company.

> "Notwithstanding anything contained in section 103, no banking company, incorporated under this Act after the commencement of this Act, shall commence business unless shares have been allotted to an amount sufficient to yield a sum of at least fifty thousand rupees as working capital, and unless a declaration duly verified by an affidavit signed by the directors and the manager that such a sum has been received by way of paid-up capital has been filed with the Registrar."

The amendment of the 7th March 1944 Section 277(I) reads as follows:—

> "Notwithstanding anything contained in Section 103, no banking company incorporated under this Act on or after the 15th day of January, 1937, shall commence business unless shares have been allotted to an amount sufficient to yield a sum of at least fifty thousand rupees working capital, and unless a declaration duly verified by an affidavit signed by the directors and the manager that such a sum has been received by way of paid-up capital has been filed with the Registrar."

> "No banking company, whether incorporated in or outside British India, if incorporated on or after the 15th day of January 1937, shall, after the expiry of two years from the commencement of the Indian Companies (Amendment) Act, 1944, carry on business in British India unless it satisfies the following conditions namely:—

> (a) that the subscribed capital of the company is not less than half the authorized capital, and the paid-up capital is not less than half the subscribed capital, and

(b) *that the capital of the company consists of ordinary shares only, or ordinary* shares and such preference shares as may have been issued before the commencement of the Indian Companies (Amendment) Act, 1944, only and

(c) that the voting rights of all shareholders are strictly proportionate to the contribution made by the shareholder, whether a preference shareholder or an ordinary shareholder, to the paid-up capital of the company."

In the proposed bank bill, the following further provisions have been made :—

"1. Notwithstanding anything contained in section 103 of the Indian Companies Act, 1913 (VII of 1913), no banking company in existence on the 1st day of January 1945 shall after the expiry of two years from the commencement of the Act carry on business in British India, and no other banking company shall after the commencement of this Act commence or carry on business in British India, unless it has a paid-up capital and reserve-

(i) of not less than twenty lakhs of rupees, if it has a place of business in India outside the province in which it has its principal place of business or if it has its principal place of business elsewhere in India than in British India, or

(ii) in a case to which clause (i) does not apply, of not less than—

(a) five lakhs of rupees in respect of a place of business at Bombay or Calcutta, plus

(b) two lakhs of rupees in respect of each town (other than Bombay and Calcutta) having a population of over 100,000 in which it has a place of business, plus

(c) ten thousand rupees in respect of each place of business elsewhere ;

Provided that in the case of a banking company to which only sub-clause (c) of clause (ii) is applicable the minimum amount of paid-up capital and reserve for the purposes of this sub-section shall be one lakh of rupees.

Provided further that no banking company shall be required to have paid-up capital and reserve exceeding twenty lakhs of rupees.

2. A banking company incorporated elsewhere than in British India or the United Kingdom shall be deemed to have complied with the provisions of sub-section (1) only if it keeps deposited with the Reserve Bank an amount not less than the minimum amount of paid-up capital and reserve required in its case under that sub-section either in cash or in unencumbered approved securities or partly in cash and partly in such securities.

3. No banking company, whether incorporated in or outside British India, if incorporated on or after the 15th day of January, 1937, shall after the 30th day of June 1946 carry on business in British India unless it satisfies the following conditions, namely :—

(a) that the subscribed capital of the company is not less than half the authorised capital, and the paid-up capital is not less than half the subscribed capital, and

(b) that the capital of the company consists of ordinary shares only, or ordinary shares and such preference shares as may have been issued before the 1st day of July 1944 only, and

(c) that the voting rights of all shareholders are strictly proportionate to the contribution made by the shareholder, whether a preference shareholder or an ordinary shareholder, to the paid-up capital of the company."

POPULATION AND BANKING CAPITAL—In the United States of America, the minimum capital of a bank seeking registration under the National Bank Acts is fixed as follows :—$25,000 for places having not more than 3,000 inhabitants ; $50,000 for towns whose population exceeds 3,000, but not 6,000 ; $100,000 for towns with a population between 6,000 and 50,000 persons, and $200,000 for places with a population of more than 50,000. The law provides that a bank cannot be started in Japan with a capital of less than a million yen, but an exception is, however, made in the case of small towns with a population of less than 10,000 inhabitants, where the capital of a bank may be 500,000 yen or more. In the case of banks to be started in large cities, the capital shall be such as the finance member will designate, but in no case shall it be less than two million yen. The minimum capital required in Canada is $500,000, half of which shall have been paid up before a bank can commence business.

SOME RELATIONSHIP BETWEEN CAPITAL AND RESERVE FUND AND DEPOSITS DESIRABLE—While one may agree with the view that capital and reserve fund need not fluctuate with the deposits of a bank it is necessary that the law should lay down a minimum percentage between capital and reserve fund and the deposits. This view seems to have the support of the leading English banks which have from time to time raised their capital so as to give adequate security to the depositors. It is, however, not suggested that every increase in the amount of deposits held by a bank should be accompanied by a corresponding increase in its capital and reserve fund.

OTHER CONSIDERATIONS—From the above, it will be clear that the larger the population to be served, the greater should generally be the capital of a bank. Of course, in addition to the question of population, other factors such as the class of customers a bank is likely to have and the business which the bank propose to carry on, should determine the amount of capital a bank should have.

The fact that the requirement regarding the minimum amount of paid-up capital a bank must have was not made applicable to banks incorporated before the 15th January, 1937, did not find favour with some bankers and consequently the proposals incorporated in the proposed Bank Act require that even banks already started will have to comply with the new provisions within two years after the passing of the said Act. They fail to realize that while passing the Companies Amendment Act of 1936, Government did not wish to give retrospective effect to the provision.

MINIMUM PROPORTION BETWEEN SUBSCRIBED AND AUTHORISED CAPITAL AND BETWEEN SUBSCRIBED AND PAID-UP CAPITAL—With a view to stop the undesirable practice of floating banks with large amounts of authorized capital and then commencing business irrespective of the amounts of subscribed and paid-up capital the Indian companies (Amendment) Act of 1944 requires that no bank, if incorporated on or after the 15th day of January 1937, shall, after the expiry of two years from the commencement of the said Act, carry on business in British India unless its subscribed capital is not less than half the authorised capital and the paid up capital is not less than half the subscribed capital.

CLASSES OF SHARES—Although banking companies generally have only ordinary shares some banks were recently floated with two or more classes of shares—ordinary shares of say Rs. 50 or Rs. 100 each and deferred shares of

Re. 1 each with equal voting powers to enable the promoter to have a controlling interest without investing large sums of money. As already stated the Act of 1944 lays down that the capital of a banking company shall consist of ordinary shares only or ordinary shares and such preference shares as may have been issued before the commencement of the said Act only and that the voting rights of all shareholders are strictly proportionate to the contribution made by the share holder, whether a perference shareholder or an ordinary shareholder, to the paid up capital of the company. It is, however, to be noted that the wording of this provision is likely to create some confusion in case a bank issues new shares on which calls are yet to be made before the paid up amount on such shares comes up to the amount paid on old shares.

DENOMINATION OF SHARES—As to the division of capital into shares, it will be noticed that, in almost all countries, the old practice of issuing shares in large denominations is being given up in favour of issuing them out in comparatively small denominations. This is partly due to the fact that the promoters of modern banks compelled, whether by law or by necessity, to start with a large amount of capital, have to approach for it even persons of moderate means, and also partly because they have to enlist the support for the sake of business. of as large a number of persons as possible. People also go in for these shares of small denominations readily, as their liability, in case of failure, is limited only to the extent of the face value of the shares held by them.

PAYMENT OF SHARES—The laws as well as the practice of certain countries, such as the United States of America and Germany, are in favour of the payment of the whole or the major part of the capital whereas, in England, bank shares are very seldom paid up in excess of fifty pel cent. of their face value. As in other respects India generally follows in the footsteps of England ; Indian banks have, in recent years, adopted the policy of calling only about half the amount due on their shares, while the balance is kept as reserve liability to be made use of in case of failure. The Central Bank of India Ltd. has, like the leading English banks, converted its uncalled capital into reserve liability so as to afford greater security to its depositors, as its uncalled capital will be called only in case of the liquidation of the bank.

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The Directorate.

APPOINTMENT—In order that a joint stock company should carry on its business, it is the duty of the shareholders to elect a certain number of directors from their own number and to place in their hands the control of the concern.

In this connection it is to be noted that Section 277H of the Indian Companies (Amendment) Act 1944 lays down that no banking company which carries on business in British India, shall after expiry of two years from the commencement of the said Act, employ or be managed by a managing agent, or any person whose remuneration or part of whose remuneration takes the form of commission or a share in the profits of the Company, or any person having a contract with the company for its management for a period exceeding five years at any one time provided that the period of five years shall, for the purpose of this Section, be computed from the date on which this Section comes into force and provided further that any such contract may be renewed or extended for a further period not exceeding five years at a time if and so often as the directors think fit.

Often the first directors are appointed by the articles of association and the others are elected at the annual general meeting—a certain proportion retiring by rotation each year and their places being filled by election. Whatever may be the nature of the business of the company, the directors must be such persons as enjoy the confidence of those with whom the company may have to deal; as this is particularly true of a banking company, whose success depends almost entirely on public confidence, it is absolutely essential that only persons who can inspire such confidence, should be elected as directors.

REPRESENTATION OF DEPOSITORS ON BOARDS—In view of the fact that the depositors of a banking company have a stake much larger than that of its shareholders it is considered desirable to provide for the appointment of one or more members on the board of directors of the bank by the depositors. In this connection attention is invited to the provision made in the new Insurance Act by which policyholders of life insurance companies are given the power to elect their nominees on the boards of directors of insurance companies.

Undischarged Insolvent not to act as Director.

Section 86A of the Indian Companies Act, 1913, as amended by the Act of 1936, makes it an offence, punishable by imprisonment for a period not exceeding two years and/or fine not exceeding one thousand rupees, for an undischarged insolvent to act as director, managing agent, or manager of a company. The application of this section extends to companies incorporated even outside British India, provided they have within it an established place of business.

PECUNIARY AND OTHER QUALIFICATIONS—"A bank director," says Gilbart (The History, Principles and Practice of Banking, by J. W. Gilbart, Vol. I, p. 397), "should be in good pecuniary circumstances. It should be a most wholesome regulation, were it stipulated in all deeds of settlement that no bank director should be privileged to overdraw his account. The great facility which directors enjoyed of raising money by overdrawing their bank accounts, has in some instances resulted in extensive commercial disasters." The history of recent bank failures in India fully bears out the truth of this statement. The pecuniary qualification of a director of a company is to hold a certain number of its shares. Although this is by no means an important qualification, it is always required on account of the well recognized principle, that a stake in the undertaking is the best guarantee of fidelity to the company's interests. Titled persons should not be appointed as directors merely on account of their titles. A well-known doctor, who was on the top of his profession, accepted the chairmanship of the board of directors of a bank, and it is no wonder, the bank had to close its doors, because, although fully competent to examine the pulse of his patients and prescribe suitable medicines, he was neither qualified to feel the pulse of the money-market, nor able to supervise the work of those who were managing or, as in fact, mismanaging the bank.

MIXTURE OF SPECIAL AND NON-SPECIAL MINDS—To quote Mr. Bagehot, "One of the most sure principles" to be kept in view at the time of appointing suitable persons as directors, "is that success depends on a due mixture of special and non-special minds—of minds which attend to the means, and of minds which attend to the end. The success of the great joint stock banks of London—the most remarkable achievement of recent business, has been an example of the use of this mixture. These banks are managed by a board of

persons mostly not trained to the business, supplemented by and not annexed to, a body of specially trained officers who have been bred in banking all their lives. These mixed banks have quite beaten the old banks, composed exclusively of pure bankers; it is found that the board of directors has greater and more flexible knowledge, more insight into the wants of a commercial community, knows when to lend and when not to lend better than the old bankers who had never looked at life, except out of bank-windows" (English Constitution, 2nd edition, p. 197). These words are as true to-day, as they were in Bagehot's day.

SPECIALLY QUALIFIED DIRECTORS FOR SPECIALISED BANKS—Besides having the general qualifications, *viz.*, sound judgment, prudence, sagacity, commonsense, strict integrity and uprightness, the directors should be well up, in particular, in the business the bank proposes to take up. For instance, if the bank proposes to take particular interest in financing the textile industry persons having connection with that industry will be most useful, provided they satisfy the other requirements. Being more in touch with the leading textile concerns, they will have a fair knowledge of the financial position of such concerns. If a bank's business extends over a large area, it is desirable that as far as possible the most important centres in that area should be represented on the board of the bank.

A DIRECTOR OF A BANK ORDINARILY NOT TO BE ON THE BOARD OF ANY OTHER BANK—It is generally considered undesirable to have on the directorate, persons who are directors of more than one bank. In the United States of America, the Clayton Act of 1914 forbids this "inter-locking of directors." It provides that no persons should be a director or other officer or employee of more than one member bank of the Federal Reserve System, if such a bank has deposits, capital, and surplus, aggregating to more than 5 million dollars. Rule 39 (2), Schedule II of the Imperial Bank of India Act of 1920 (XLVII of 1920) as amended by Act III of 1934, lays down:

> No person shall be qualified to serve as a director or as a member of a Local Board if he holds the office of director, provisional director, promoter, agent or manager of any joint stock bank established or having a branch or agency in British India, or British Burma or advertised as about to be established or to set up a branch or agency in British India or British Burma. Provided that this disqualification shall not apply to any person being a director of a joint stock bank, who may be nominated as a director under the provision of clause (iv) of sub-section (1) of section 28, or if he is a salaried officer of the Crown, not specially authorised by this Act, or by the Central Government, to serve as a member.

Similarly section 10 of the Reserve Bank of India Act 1934 (II of 1934) disqualifies a person who is a director of any bank other than a bank which is a society registered or deemed to be registered under the Co-operative Societies Act, 1912 (II of 1912) or any other law for the time being in force in British India relating to co-operative societies.

UNDESIRABILITY OF INTERLOCKING DIRECTORS.—The reason for deprecating the interlocking of directors is simple. It tends towards division of interest and may even lead to the sacrifice of the interests of the one for the benefit of the other. The reason for excluding from the Central and Local Boards of Central Banking institutions, wherever they exist, persons connected with other banks is different. The main function of a Central Banking institution is to rediscount the bills held by its member banks and it will not have unfettered discretion, which it must have to accept or reject the paper, if a director of a member bank is also its director. It may lead to unfair treatment and all its concomitants.

LEGAL POSITION OF DIRECTORS—It would give a very erroneous idea of the position and functions of directors to speak of them as merely trustees except in a modified sense. Rather, they are "commercial men managing a banking concern for the benefit of themselves and the other shareholders." They hold a legal position which is partly that of the agents and partly that of the trustees. In allotting and issuing shares, debentures and stock, making calls and passing transfer of shares, they act as trustees for the shareholders, while in conducting the business of the bank they act as its agents. In this latter capacity they can bind the bank only for such transactions as are not *ultra vires* the bank.

DISCRETION OF DIRECTORS—Generally speaking, every company and especially a banking company, has one main object, with several minor ones clustering around it, for the easy attainment of the main object. But in the absence of an expressly stated provision in the object-clause of the memorandum, it will be *ultra vires* the company to undertake to do any kind of business not provided for in the memorandum. Towards the end of the object-clause, there is often found a general proviso, *e.g.*, "and to do any other kind of business that the directors may think proper." Such a clause is essential, as the directors must have a free hand and a wide discretion to deal with the exigencies of the commercial situation and to extend and consolidate the bank's business. But they are to use this discretion so long as they keep within the limits set by the Company's Memorandum and Articles. They are not authorized in any way to undertake work of a nature different from that which the company is authorized to do by the main object-clause unless there is an express provision for the same in the object-clause. The directors, as trustees of the powers given to them by the shareholders, are required to exercise those powers as carefully as possible, in the best interests of the company.

Directors' Civil Liability.

THREE TYPES—The directors are not to be held liable for mere errors of judgment, still less for being defrauded; all that the law requires of them is that they should be faithful in their duties as agents of the company. Their civil liability may be classified under the following three heads: (i) their liability to those dealing with the bank, (ii) their liability to the shareholders of the bank, and (iii) their liability to the bank itself.

TO THOSE DEALING WITH THE BANK—Liability under the first head will arise when the directors of a banking company enter into contracts which are not binding upon the company on the ground of their being *ultra vires*. For instance, if the directors of a joint stock bank take a bullish view of the cotton market and make a forward purchase of 1,500 bales of cotton on behalf of the bank, no claim for a possible loss in the transaction can be maintained against the bank, on the ground that it is no part of the business of a bank to speculate in cotton. Anything done *ultra vires* the bank cannot be ratified, even if all its share-holders are willing to do so (*Irving* v. *Union Bank*, P.C. 3 Cal. 280) (285). Such a contract, however, may be binding on the directors who actually enter into it, on the ground that a person who induces another to enter into a contract with a third party by an unqualified assertion of his being authorized to act as agent for such third party, is answerable to the party who is so led to make the contract, for any damages which he may sustain by reason of the assertion of authority being untrue (*Collen* v. *Wright* (1857), 8 El. and Bl. 647). The same will be the case, if a director endorses or draws a bill

without making it clear that he is acting as an agent of the company. For instance, if a bill is endorsed by a director in the following manner:—H. L. Avari, Director of The New Indian Exchange Bank Limited, he can be held liable to the holder of the bill because the indorsement does not make it clear that the director acted as an agent of the bank, though, in case the indorsement is in fact made on behalf of the bank, he has a right to be indemnified by the bank for a casual mistake in indorsing.

To SHAREHOLDERS AND CREDITORS—Under the second head, directors are liable to the shareholders for any misrepresentation or any false statement in any prospectus or report, which they may issue. They make themselves personally liable to persons, who, induced by statements contained in such reports, subscribe to the shares of the bank. Similarly if a person is led to give credit to a bank on account of some misrepresentation on the part of any one or more of its directors and his money is lost he has a valid claim against the director or directors responsible for the misrepresentation. However, the court will not, as a rule, interfere, with the discretion of the directors honestly exercised, in the management of the bank's affairs.

To THE BANK—Under the third head, directors are liable to the bank and this liability will arise in the following three different ways. The ground of this liability is the element of trusteeship in the office of a director.

For secret profits. Directors must not accept presents in cash or shares, or in any other form, from any promoter of the company, nor must they make any profit in the matter of their agency, without the knowledge and consent of their principal, the company (*Re North Australian Territory Co., Archer's Case* (1892), 1 Ch. 322). They must not, in other words, put themselves in a position in which their duty to the bank and their own interests clash, or may even be suspected of clashing. They must account to the bank for any secret profits made by them (*Alexander v. Automatic Telephone Coy.* (1900), 2 Ch. 56 (67, 72).). If, for example, a payment is made to a director to induce him to sanction a loan to a customer, the bank is entitled to claim the money so paid to the director, as money received by the director for and on behalf of the bank and held by him in trust for the bank.

For misappropriation and misapplication. A director is liable for misappropriation as well as misapplication of the bank's money. An instance of such misapplication would be the payment of dividends out of the share capital and if the directors authorize the payment of such dividends, they will be personally liable to the bank and bound to refund to the bank any moneys, so paid out to the shareholders. They will also be held guilty of "misfeasance" or breach of trust and held liable to the bank when they return capital to the shareholders or spend money of the bank in "rigging" the market or in buying the bank's shares, or paying commission for underwriting the shares of the company (except to the extent authorized by the articles). All who join in the act of misapplication are jointly and severally liable to the bank to replace, the sums so misapplied. Sometimes, the financial position of the directors guilty of misfeasance is so hopeless that both the shareholders and the creditors are reluctant to spend money on prosecuting and bringing them to book, though they are responsible for the state in which the company finds itself, thanks to their mismanagement, manipulation of accounts, or fraud. Such directors should not, however, be allowed to go scot free; and must be prosecuted in the interests of the investing public.

Loss due to gross negligence. Loss due to gross negligence of any one of the directors may similarly be recovered, in certain cases, from the directors guilty of such negligence. The extent of negligence which makes the directors liable can be gauged from the following extract from the judgment of Lindlay M. R. in *Lagunas Nitrate Co.* v. *Lagunas Syndicate* (1899), 2 Ch. D. 435, where he said : " The amount of care to be taken is difficult to define ; but it is plain that directors are not liable for all the mistakes they may make, although if they had taken more care, they might have avoided them ; see *Overend Gurney & Co.* v. *Gibb* (1872), 5 E.I.A. 480. Their negligence must be not the omission to take all possible care, it must be much more blameable than that ; it must be in a business sense culpable and gross. I do not know how better to describe it."

INDEMNITY CLAUSE VOID—The indemnity clause generally appearing in the Articles of Association formerly enabled the directors to escape their liability in cases of proved neglect of duty, but the English Companies Act, 1929, has declared such clauses as void. Courts of law have been empowered however, to indemnify or relieve from liability on such terms as may be deemed fit, whether wholly or partly, a director, manager, officer or auditor of a company, who is proceeded against for negligence, default, breach of duty or breach of trust or on application from such person who has reason to apprehend that a claim may be made against him in respect of such an offence, provided that such director or other officer, as heretofore mentioned, has acted *bona fide*, honestly and reasonably and ought fairly to be excused. It will not be just to hold a director who habitually absains from board meetings liable for the acts of his colleagues, because he is not bound to attend all the board meetings. Following the English Act, section 86C of the Indian Companies Act, 1913 (VII of 1913) invalidates such provisions as may be contained or incorporated in the Articles of Association of or in any contract made with a company, calculated to exempt or indemnify any director, manager or officer of the company against any liability which, by virtue of any rule of law, would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company. The only exception engrafted on the generality of the section, is that contained in proviso (*c*) to that section which, as aforesaid, read with section 281 provides for relief to be granted by a court.

LIABILITY OF DIRECTORS UNDER THE INDIAN COMPANIES ACT—The directors of a bank registered under the Indian Companies Act, 1913 (VII of 1913) are also liable under the following provisions of the said Act :—

FAILURE TO PUT UP A SIGN BOARD—Section 74 (1) provides that: If a limited company does not paint or affix, and keep, painted or affixed, its name in manner directed by this Act, it shall be liable to a fine not exceeding fifty rupees for not so painting or affixing its name, and for every day during which its name is not so kept painted, or affixed, and every officer of the company, who knowingly or wilfully, authorises or permits the default shall be liable to the like penalty.

USE OF THE FULL NAME OF THE COMPANY.—(2) If any officer of a limited company, or any person on its behalf, uses or authorises the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid, or issues or authorises the issue of any bill-head, letter-paper, notice, advertisement or other official publication of the company or signs or authorises to be signed on behalf of the company any bill of exchange, hundi, promissory note, indorsement, cheque or order for money or goods, or issues or authorises to be issued any bill of parcels, invoice, receipt or letter of credit of the company, wherein its name is not mentioned in manner aforesaid, he shall be liable to a fine not exceeding five hundred rupees and shall further be personally liable to the holder of any such bill of exchange, hundi, promissory note, cheque or order for money or goods for the amount thereof unless the same is duly paid by the company.

AMOUNTS OF SUBSCRIBED AND PAID-UP CAPITAL TO BE PUBLISHED WITH THAT OF AUTHORIZED CAPITAL—Section 75 (1) *ibid*: Where any notice, advertisement or other official publication of a company contains a statement of the amount of the authorised capital of the company, such notice, advertisement or other official publication shall also contain a statement in an equally prominent position and in equally conspicuous characters of the amount of the capital which has been subscribed and the amount paid up.

(2) Any company which makes default in complying with the requirements of this section and every officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding one thousand rupees.

FAILURE TO HOLD ANNUAL GENERAL MEETINGS ONCE A YEAR—Section 76 (1) *ibid*: A general meeting of every company shall be held within eighteen months from the date of its incorporation and thereafter once at least in every year and not more than fifteen months after the holding of the last preceding general meeting [and if not so held, section 76 (2) makes the company and every officer of the company who is knowingly a party to the default liable to a fine not exceeding five hundred rupees. When default has been made in holding a meeting of the company, in accordance with the provisions of section 76 (1), the court by virtue of section 76 (3) may, on the application of any member of the company, call or direct the calling of a general meeting of the company].

REGISTER OF MORTGAGES AND CHARGES—Section 123(1) *ibid*.: Every company shall keep a register of mortgages and enter therein all mortgages and charges specifically affecting property of the company and all floating charges on the undertaking or on any property of the company, giving in each case a short description of the property mortgaged or charged, the amount of the mortgage or charge and (except in the case of securities to bearer) the names of the mortgagees or persons entitled thereto.

(2) If any director, manager or other officer of the company knowingly and wilfully authorises or permits the omission of any entry required to be made in pursuance of this section, he shall be liable to a fine not exceeding five hundred rupees.

FAILURE TO COMPLY WITH THE LEGAL REQUIREMENTS OF A BANKING COMPANY—Every director or other officer of a banking company, who is knowingly or wilfully a party to the default in complying with the requirements of the following sections of the Indian Companies Act, 1913 (VII of 1913) as amended by the Amendment Act, 1936 (XXII of 1936) is liable to a fine not exceeding Rs. 500/- for every day during which the default continues:—

(1) Provision as regards the maintenance of cash reserve— section 277L.
(2) Provision as regards the Reserve Fund—section 227K.
(3) Provision restricting the activities of a banking company—sections 277F and 277G.
(4) Provision prohibiting employment of managing agents—section277H.
(5) Provision prohibiting creation of any charge on its unpaid capital—section 277J.
(6) Provision restricting the nature of a subsidiary company—section 277M.

Although the directors have the supreme control of a bank, its actual business has to be entrusted to other officers who are usually full-time employees of the bank and therefore it is necessary to consider the qualifications, the scope of authority and the liabilities of such officers.

II

General Manager.

The term "Manager" or "General Manager" is generally used in one and the same sense but is distinguishable from "Branch Manager."

The person who performs the work of a manager is a *de facto* manager and therefore comes within the meaning of the term "officer," as used in the Indian Companies Act, 1913.

DEFINITION—The Indian Companies (Amendment) Act, 1936 (XXII of 1936), section 2, clause 9, defines a manager as a person who, subject to the control and direction of the directors, has the management of the whole affairs of a company and includes a director or any other person occupying the position of a manager by whatever name called and whether under a contract of service or not.

Qualifications.

"To be a good banker requires some intellectual and some moral qualifications. A banker need not be a man of talent but he should be a man of wisdom. Talent, in the sense in which the word is ordinarily used implies a strong development of some one faculty of the mind. Wisdom implies the due proportion of all the faculties. A banker need not be a poet or a philosopher, a man of science or of literature—an orator or a statesman. He need not possess any one remarkable quality by which he is distinguished from the rest of mankind. He will possibly be better without any of these distinctions. It is only necessary that he should possess a large portion of that practical quality which is called commonsense. Banking talent consists more in the union of a number of qualities not in themselves individually of a striking character but rare only in their combination in the same person. It is a mistake to suppose that banking is such a routine employment that it requires neither knowledge nor skill. The number of banks that have failed within the last fifty years is sufficient to show that to be a good banker requires qualities as rare and as important as those which are necessary to attain eminence in any other pursuit" (The Logic of Banking by J. W. Gilbart).

GENERAL QUALIFICATIONS—Generally, it may be said that the manager of a bank should, as far as possible, possess in addition to having practical experience and theoretical training, all the good qualities of head and heart, in order to do justice to the requirements of his important position. However great the technical knowledge and however wide the experience a bank manager may have, it is the way he makes use of these instruments, which will prove him to be competent or otherwise. His success, in some cases, may be due to his charming manners which are hard to resist, or a virile and forceful personality and mental capacity sure to impress those who come in contact with him. Or again he may be quick and responsive with a special capacity for active help. But the gifts which will make him certainly a popular and successful manager are sobriety, sympathy, self-confidence and decisiveness, together with a powerful personality which depends on several factors, such as character, personal appearance, a cheerful countenance, cleanliness, etc. It is true that clothes do not make the man, but it is also equally true that they make all that is seen of him, except his hands and face, during the business hours. A pleasant temperament and courteous manners are qualities which, if possessed by the manager, will prove a valuable asset to the bank.

Essential Qualities.

Besides the general qualifications given above, a bank manager must possess the following essential qualities :—

BUSINESS-LIKE AND IMPARTIAL—Absence of bias, religious, social, or political, is essential and whilst having regard to what human nature is total

absence of such bias may not be obtainable, a bank manager must always remember that the religious, social, or political views of his clients are no concern of his; nor must he show any favour to his friends. He should as far as possible treat all customers alike and should not be afraid of any one of them; nor should he place himself under undue obligation to any one. He should be honest in intention as well as in fact to all his customers big or small, rich or poor, shrewd or ignorant.

QUICK TO JUDGE AND PROMPT TO ACT—A bank manager must always be quick to perceive and vigilant to note, every change in the circumstances of his customers and must take care to suppress the slightest tendency towards laxity on his part. Despatch is the soul of business, and "He who hesitates is lost," is wonderfully true in the banking profession. He should be capable of saying "yes" or "no"; and should not try to evade the issue on the ground of mature deliberation. But this does not mean that if the manager is in doubt as to the safety of a transaction, he should be afraid to express his opinion. Rather, he should give the benefit of doubt to the bank.

DISCRETION AND COURTESY—Another quality which the general manager of a bank should have, is reluctance in giving advice on a subject in which he is not fully competent. In fact, he is under no obligation to advise, but if he takes upon himself to do so, he will incur liability in case he does so negligently. Similarly, when he has to reply to an enquiry from a fellow banker regarding the financial position of his customer, he must be very careful that he gives no opportunity for any action being brought against him, for misrepresentation or libel, by the enquiring bank or the customer respectively. He should be scrupulously careful in meeting such situations and his letters and reports should as far as possible, be concise, clear and courteous. He should not sacrifice either lucidity or courtesy on the altar of brevity.

DELEGATION OF WORK—He should be able to control the staff and act through others. To carry on the management efficiently, he has to depend upon capable assistants and clerks; he should therefore be able to choose suitable assistants to whom he can delegate duties of detail, since his mind and energy should be free to deal with the larger questions of policy. A general manager cannot be expected to attend to all sorts of things; his own time should be available for work of an important nature. He has under him a chief accountant who looks after the accounts, and superintendents in charge of different departments; he has to get work done by them and to supervise the working of the whole net-work of branches, which may be spread over a large area.

PROFESSIONAL LOYALTY—Lastly, he should cultivate most cordial relations with his rivals and be very loyal to any understanding he may have with them.

Defects to be avoided.

INDECISION—It must also be remembered that the manager of a bank should be free from certain defects. Firstly, he should be free from the habit of being indecisive, as, not only the customers of a bank cannot afford to lose their precious time, but also because he will find it impossible to get through his work. For instance, if a bank manager is unable to make up his mind within a reasonable period about the proposals placed before him, the work will go on accumulating, and this will result in his being compelled either to decide about them without proper consideration, or to curtail his business.

LACK OF FINALITY—Secondly, he should not lack in firmness of his opinion. It is not at all desirable that when he has decided against the entertainment of a particular loan application, he should on the persuasion of his customer, change

his mind and grant it. Not only will this lead to considered opinion being set aside in favour of persuasion by a customer, but will also result in the waste of a considerable portion of his precious time, as the customer will put forward different arguments and pleas in order to change the manager's opinion if it is known to the former the latter is not firm in his opinion.

Scope of Authority.

CAN BIND AS AGENT—The general manager of a bank is its general agent. In the exercise of his authority he is controlled by the directors. However, he will bind the bank by his acts, not only when they fall within the scope of the authority given to him but also when they exceed the authority, provided in the latter case they are within the scope of his apparent authority and the party claiming the benefit of those acts has no knowledge of the restrictions placed upon the authority of the manager. This view is supported by the following remarks of Sir Montague Smith J., made in *Bank of New South Wales* v. *Owston* (1879), App. Cas. 270 (289): "The duties of a bank manager would usually be to conduct banking business on behalf of his employers and when he is found so acting, what is done by him in the way of ordinary banking transactions may be presumed until the contrary is shown to be within the scope of his authority: and his employers would be liable for his mistakes and under some circumstances for his frauds in the management of such business."

CRIMINAL ACTS—The question of the liability of a master for the criminal acts of his servant is not free from doubts. On the one hand it is said that the mere act of committing a crime, or in any case a serious crime, terminates the services of a servant and consequently such an act cannot be regarded as within the scope of his authority (*per* Collins M. R. in *Chertive* v. *Bailey* (1905), I K. B. 237, at p. 241). This view, however, appears to be contrary to the several decisions by which employers have been held liable for the criminal conduct of their employees. Moreover since the decision of the House of Lords in *Lloyd* v. *Grace Smith & Co.* (1912), L.A.C. 716, it is doubtful whether any distinction can be drawn between a tortous act of an employee which is not criminal and that which is. According to Mr. Chorley (Law of Banking by R. T. S. Chorley, p. 305) the test to apply is to ask the question whether the particular act under discussion would normally speaking, and apart from the fact that in this particular occasion it was criminal, be within the authority of the servant. In case of the reply being in the affirmative the employer would be liable. By the application of this test it will be found that a bank could seldom be held liable for larcenous acts of its employees but it might be held liable for fraudulent conversion.

Liabilities of General Manager.

The Liabilities of a general manager may be classified as follows :—

FOR WANT OF DUE DILIGENCE—A manager of a bank is bound to be reasonably diligent in his office. In case of default he will be liable to compensate the bank for any loss it might suffer. Section 86-C of the Indian Companies Act, 1913, as amended by the Amendment Act of 1936 makes void any provision, whether contained in the articles of a company or in any contract with a company or otherwise, for exempting any director, manager or officer of the company.............from indemnifying him against any liability, which by virtue of any rule of law, would otherwise attach to him in respect of any negilgence, default, breach of duty or breach of trust of which he may be guilty in relation to the company.

FOR SECRET PROFITS AND COMMISSIONS—The general manager is also liable to account for all profits which he makes in connection with his duties to the bank; for instance, if he gets a commission for giving accommodation to a customer of the bank. The manager will also have to refund to the bank any commission received by him, as for example, for arranging an amalgamation of the business of his bank with that of another. In *General Exchange Bank* v. *Horner* (1870), L.R. 9 Eq. 485, Lord Romilly M. R. said, "He was a manager bound to consult the shareholders' interest solely and he cannot, in my opinion, retain himself a pecuniary benefit obtained by him in his character of manager, not known to and not sanctioned by, the shareholders who employed him."

UNDER THE INDIAN COMPANIES ACT— The general manager, being an officer of a bank, is liable in the same way as its directors, under sections 74, 75, 76 and 123 of the Indian Companies Act, 1913 (VII of 1913) as amended (XXII of 1936).

THE BRANCH MANAGER— The authority of a branch manager is ordinarily confined to the transactions of the branch. He has power to call in money advanced by the branch under his charge, but not such as may have been advanced by other branches or by the head office. He should never commit the mistake of putting the blame of turning down a loan application on the head office, when he knows all the time that he should never have submitted the proposal.

Bank Building, Stationery and Appliances.

BANK BUILDING—A bank should have its premises according to its status. The bigger a bank, the grander should be its building. This is so, not only because a bank building provides a convenient and more or less a permanent place of business, but also because an impressive and a magnificent building acts as an advertisement. It should be within easy access of its customers and preferably in the commercial centre of the city, where the bank proposes to carry on its business. Looking to the several advantages and the indispensable nature of a suitable bank building, it would be useless to argue that the capital sunk in the premises is unprofitably invested and remains locked up with a very small return. Bankers as a rule write down the value of their premises out of their profits. For instance, one of the most valuable sites in London, the site and building of the Bank of England does not appear in the statement of the Bank of England's assets Similarly, the various buildings owned by the Imperial Bank of India in different parts of the country, are included in the item of dead stock in the bank return, but their book value is very likely below much their market value. The size and the nature of the building depend on the requirements of a bank and the amount of capital it can spare for the purpose (the Fundamentals of Good Bank-Building by Alfred Hopkins). The amount of money to be invested in buildings should in no case be out of proportion to the paid-up capital and reserve fund of a bank. It may, however, be remarked, that in estimating the requirements, due provision should be made for the probable expansion of the business of the bank.

STATIONERY- Besides the usual ledgers, bills receivable and bills payable registers, the bank has also to stock pass books, cheque books, paying-in-slip books, voucher forms and several other printed forms; *e.g.*, the opening of account application forms, forms for advising customers about receipts and payments, guarantee forms, indemnity forms, etc., etc.. The letter paper of a bank should bear its address, telegraphic address and telephone number along with the head office address embossed at the top. As the letterhead is the

background of every letter and is an important factor in the impression it creates, a bank letterhead should be of good quality and dignified in appearance. The letterhead as well as the message should command the respect of the reader. A good quality letterhead, like a good building and its fixtures, is an indicator of financial stability and character. In designing a letterhead, it is desirable to entrust the work to a high class stationer who specializes in bank stationery. With his experience and the facilities available to him, he is capable of developing and working out the ideal outlined to him.

BANK TELEGRAPHIC CODES—All banks, particularly those engaged in exchange business, must have a private code of their own. This is essential not necessarily for reducing the cost of telegraphic and cable charges, but mainly to make the genuineness of such messages certain to their branches and agencies. After codifying the message, a private word is generally added to guarantee its authenticity. A private code of this nature is usually kept in charge of the highest officer of a bank.

APPLIANCES—In addition to the usual office appliances, some of the leading banks in western countries have installed machines, for keeping accounts. As the movement towards mechanization of bank accounts is gaining in importance, we propose briefly to consider its pros and cons, the scope and chances for its adoption by Indian banks.

EMANCIPATION FROM ROUTINE DRUDGERY—*The old order changeth yielding place to new.* The new inventions of this mechanical age, which are gradually emancipating the world from the age-long thraldom of routine drudgery, are now pursuing their way in the banks with increasing momentum. Neat, accurate up-to-the minute records are taking the place of the old fashioned pen-and-ink ledgers and pass books.

Mechanization of Bank Accounts: Advantages.

The following are some of the important advantages, resulting from the mechanization of bank accounts :-

SAVING IN STAFF, SPACE AND STATIONERY—A bank adopting the mechanization of bank accounts, can handle a greater volume of work with less staff and open additional branches without materially augmenting its staff. The resultant economy of floor space is sure to bring about relief from the congestion existing in bank offices, where it is impossible to extend the premises. The number of desks and pedestals required will be less. By the use of new ledgers the cost of stationery, other supplementary books and pass books, may be substantially reduced.

SAVING IN TIME—The customer will be able to obtain a complete statement —showing all transactions and the balance to date—at a moment's notice or at regular intervals by arrangement. The inevitable delays occasioned by the old system of having to leave the pass books at the bank for several days whilst they were being written up, will be eliminated.

GREATER SPEED, ACCURACY, AND NEATNESS IN ACCOUNTS—All ledgers will be balanced daily and with greater speed, accuracy and economy. The whole of the accounting work will be compassed by fingering keys, pressing buttons and manipulating switches, with infinite relief to the eyes and brains of the clerks entrusted with routine duties. Human beings are liable to err, but machines have an infallible exactitude which can never be surpassed, even by the most scrupulous of clerks. However accurate the work done under the old system, it can never be so correct as that done under the new one, because the

new system is virtually a self-balancing and self-correcting one. Moreover, the work, being mechanical can be very neat and most legible.

BETTER TRAINING AND MORE LIQUIDITY OF THE STAFF—Clerks will obtain a comprehensive knowledge of banking more quickly than if they spent years in listing, adding clearings and posting ledgers, as in the past. Work which is mechanical, quasi-automatic and which does not involve a high degree of skill, can be relegated to the machines. The clerical staff thus released, will be rendered available for work for which greater use of intelligence, ability and skill is required. The staff will become much more flexible, because any clerk will be able to use the machines when the regular operations have to be away owing to illness, leave or for other causes.

Disadvantages.

REDUCTION IN STAFF —The installation of ledger-posting machines brings about some reduction in staff, where pass books are replaced by statements of accounts, as the services of those employed to write up the pass books either from the vouchers or from the entries in the ledger, can be dispensed with. No doubt, while a portion of the displaced officers may be utilized to meet the constantly growing volume of bank work, there is bound to be a stoppage of recruitment during the period of adjustment to the new condition. However, as the work required of a banker is incessantly increasing in scope as well as in volume, the staff thus released can be used to meet this increase. Secondly, the change to mechanization will take a considerable time for adjustment to the new system. Thirdly, there is the uncertainty whether the customers will accept the new method of keeping their accounts by the banks.

In India.

In the case of banks in India, the pen has not yet been suppressed by machinery for the following reasons :—

REASONS FOR THE BACKWARDNESS OF INDIAN BANKS IN THE USE OF ACCOUNTING MACHINES—Firstly, because India is handicapped by a belated start in joint stock banking. Very often the capital of Indian banks bears no comparison to that of western banks. The scope and volume of work handled by them is relatively small.

INDIAN CONSERVATISM—Secondly, the innate conservatism of the Indian regarding the introduction of complete loose-leaf system, entailing departure from the long established custom of using bound ledgers, stands in the way of introduction of mechanized accounting. Natural diffidence and lack of enterprise to changing a complete and reliable book-keeping system for one untried and in respect of which no previous experience of data exist, has not yet been overcome by the Indian banks.

DOUBTFUL RECEPTION—Thirdly, there is the doubt as to how the banking portion of the Indian public would accept a departure from the usual form in which the records of their accounts have been submitted.

LOW SALARIED STAFF—Lastly, owing to the comparatively low salaries paid to the clerical staff of banks in India it may not be always economical to introduce mechanized accounting.

MECHANIZATION BOUND TO COME—The reason stated above are not likely to last long even in the case of India. With the development and progress of the Indian joint stock banks, India will also succumb to the relentless tide of progress and western mechanized accounting which appears somewhat strange

to the Indian public today, will become a commonplace of the future and the time is not far when pen-and-ink ledgers and pass books will become things of the past.

OTHER MODERN APPLIANCES—Besides the accounting and ledger-posting machines, there are many other newly invented devices not only to simplify but ensure greater security to a banker's work. Among such devices mention may be made of the photo-recording machines which provide photographic records of batches of cheques and other documents, "sorter-graph" for sorting cheques and to the use of the ultra-violet rays by means of which the banker is able to find out the genuine from the spurious. "The filtered rays of the mercury—vapour lamp are an absolutely infallible medium of testing bank-notes, securities and letters of credit."

III

Bank Publicity.

AGE OF PUBLICITY—In these days of keen competition the person who does not blow his own trumpet must go to the wall. Advertising has become one of the most important means for attracting customers; but what modes of advertisement are suitable for banking institutions has given rise to much difference of opinion.

DIFFERENT FORMS OF BANK PUBLICITY—It is generally conceded that advertising in the newspapers and commercial periodicals is the best form of bank publicity. The message is carried to every reader of the newspaper individually and the wider the circulation of the medium of publicity, the greater is the likelihood that it will bring a larger number of customers to the advertising banker. However, there are a number of institutions, which, for one reason or another, do not depend entirely upon the advertising columns of the newspapers. In some cases, it may be due to the fact that there is no suitable newspaper circulating in the locality, or among certain classes of customers served by the banks. In others, the exorbitant rates quoted by the management of the newspaper companies may scare away a bank from making use of newspapers. In addition to the use of newspapers and periodicals for bank advertising, other forms of publicity are also essential. There is a sufficient scope for consideration of plans and schemes, which may be adopted for bank advertising. For instance, the opening ceremony of a new bank is performed largely, if not entirely, with the object of advertising it. Speeches specifying the distinguishing features and indicating the facilities provided for its clients by the new institution are delivered and published in the press. Sometimes *souvenirs* are distributed on such occasions. Celebrations of bank centenaries and jubilees have also a similar object in view.

CIRCULAR LETTERS AS A FORM OF BANK PUBLICITY—For the purpose of inviting new customers to open accounts at the bank, printed letters are sometimes addressed to the prospective constituents, individually. The specimen letters asking for the opening of savings bank accounts given in Appendix A, Form No. 19, *et seq. post*, will, it is hoped, be found useful. Similarly, persons likely to open current accounts or give other kinds of banking business are written to individually. Pay envelopes, on which there is some printed matter impressing upon their recipients that they should provide for the rainy day, are sometimes supplied by banks to certain types of customers, such as, industrial concerns.

MONTHLIES, QUARTERLIES AND BOOKS—Most of the leading banks in western countries issue monthlies or quarterlies, which, in addition to having commercial and banking news, contain articles on commercial and financial questions of the day. There are some banks which publish and distribute among customers and prospective constituents, books dealing with important topical problems. For instance, the Banker's Trust Company of New York published sometime back, about half-a-dozen books dealing with questions pertaining to the public finances of several countries.

RAILWAY TIME-TABLES, MAPS, CALENDARS, ETC.- A number of banks issue railway time-tables, maps, calendars, diaries, catalogues or even purses, etc., for the use of their existing and prospective customers. Several banks, in the United States of America and other countries, collect reliable and useful information about the industrial and commercial conditions of the world and make it available to those of their customers who have dealings with those countries. Some banks offer prizes for best specimens of corn, cotton, or something else produced in the locality.

Window Display.

VARIOUS FORMS—The same basic principle which governs the window display of a big store, governs the bank window display. The main object of both is to sell—the former selling its merchandise and the latter its service. In the case of bank window display, however, instead of using tailors' dummies dressed in clothes of the latest fashion, well-known sayings and proverbs are dramatized. For instance, *Keep the wolf away from the door*, may be used to illustrate the moral that by opening a savings bank account with the bank, the wolf of hunger can be kept far away. Here, a hungry wolf in search of prey is exhibited as incapable of doing any harm to a family, safe behind the walls of a snug little cottage with a smoking chimney and with provisions enough to last them for the whole of winter.

WHAT INDIAN BANKS MAY DO—The much maligned hoarding habit of the Indian people, is the worst enemy of the banks in India and they have tried their level best to discourage it. A bank may exhibit in its windows on one side, a man pouring Rs. 5-0-0 into a savings box with one hand and taking out, with the other hand, Rs. 5-4-0 from a hole at the bottom of the box. On the other side of the window, a man burying a box containing rupees or rupee notes under the ground may be shown: the box rusts away, the rats remove rupees and notes to their holes and the man is left aghast. Some banks use piles of gold bricks and coins of different countries for window displays. Magnified photographs of cheques with remarks such as "As good as gold, but far safer," will convey the message at a glance to any casual passer-by. Among the ignorant and illiterate agriculturists, lantern lectures would be useful. Films about the atrocities of the village money-lender, the effects of his usurious rates, etc., will form excellent topics such as a peasant coming home with a cart-load of ready corn meets the sowcar, who demands corn in payment of debts; the whole family looks aghast! The sowcar goes to the court and gets a decree which leaves the peasant destitute and homeless. A somewhat wiser peasant becomes a member of a co-operative credit society, gets a loan, pays by instalments, prospers, and the whole family is happy.

IMPERATIVE NEED OF PUBLICITY IN INDIA—In view of the absence of banking habit among the people of India, the need of bank publicity cannot be over-emphasized and it is, therefore, very desirable that banks in this country should not lag behind in this matter. A well designed campaign of publicity is to the banker's own advantage; while it will benefit customers, in particular, it is bound to advance the economic and financial interests of the country in general.

IV

Bank Accounting.

COST ACCOUNTING—The importance of proper book-keeping cannot be over-stressed. It is generally admitted that accuracy of accounts is not only desirable, but essential for the success of a bank or for the matter of that, any business concern. In these days when competition is so keen, no business can afford to ignore the question of cost. Some persons specialize in this branch of accounting and its importance can be well understood by the fact that elaborate systems of cost accounting are being used in different kinds of manufacturing and other concerns and that there are, at present, associations like the Institute of Costs and Works Accountants, London and the National Association of Cost Accountants, New York, specializing in this branch of accounting. It may be said that a banker neither buys nor sells goods nor commodities; he need not, therefore, worry himself with cost accounting. While it is true that a banker does neither buy nor sell goods, he does, however, render certain services to his constituents, the cost of which he should find out in order to see whether or not a certain customer's account is a paying one.

AN ESSENTIAL OF SOUND BANK BUSINESS Moreover, accounts must be kept not only for the purpose of finding the cost of an article, or certain services, but also for finding the exact amounts owing to and by industrial and commercial concerns. This aspect is of particular importance as far as banks and bankers are concerned, because not only the failure to keep proper accounts by a banker may affect his credit, but it may lend him in difficulties. For instance, if a banker's clerk, who receives a certain sum of money for the credit of A's account, by mistake passes the entry into *B*'s account, the banker, may, on the one hand, be unable to recover the excess amount drawn and spent by *B* if *B* can prove that the wrong entry in the pass book misled him so as to alter his position; on the other hand, the banker may have to pay damages to *A* if his cheque is dishonoured on account of his balance being reduced as a result of the above mistake. It may also be stated, that sometimes even businessmen depend upon their bank records in the matter of their financial dealings. No banker can afford to be careless in the matter of accounting, and therefore, this department is always placed under a competent senior officer of a bank.

OBJECTS OF KEEPING PROPER ACCOUNTS BY BANKS—The chief objects with which bank accounts are kept, are the following:—

(*a*) To have a chronological account of all transactions done by a bank, as a bank must be able to produce sufficient proof of what it does from day to day. These running accounts are very important.

(*b*) To know the exact amounts owing to and by a bank. Unless a banker knows what are the exact amounts due from various customers, he cannot possibly make demands upon them. Similarly, unless a banker knows what are the amounts owing by him to his customers, he cannot honour their cheques and make other payments required by them.

(*c*) To know its exact position at all times and thus to find whether or not the business is making progress.

GENERAL PRINCIPLES OF BOOK-KEEPING APPLICABLE TO BANKS—The general principles of book-keeping govern bank accounting, as much as that of any other kind of business. The rules which govern bank accounting are the same for all banks and therefore, the general books of records are more or less similar. However, the manner of recording and the modes of procedure are essentially matters of detail.

BANK RECORDS—It is not possible to give a set of bank books that could be used by all kinds of banks. The nature of books is likely to differ with the nature of the requirements of a bank. Moreover, it is not so very important how the result is achieved, so long as the accuracy of records and completeness of control can be obtained. No doubt, attempts are sometimes made to simplify and standardize the system of bank book-keeping and generally, in this respect, the lead of a well-managed bank is followed by other banks. Banks keep three kinds of records:—

(a) Corporate records;
(b) Financial records;
(c) Statistical records.

CORPORATE RECORDS—Corporate records are those records which relate to the corporate life of a bank. These usually consist of (i) share-ledger; (ii) share-certificate book (see Appendix A, form No. 3); (iii) share transfer book; (iv) dividend book and (v) minute book. In the share-ledger are the accounts of the various shareholders, showing the several numbers of shares allotted to them, their nominal value, the amount paid on them and the entries of several shares transferred from one account to another. The share-certificate books generally have the counterfoils of the certificates issued to the different shareholders. In the share-transfer register, the transfers of shares are registered and in the dividend books, the counterfoils of the dividend warrants issued are kept. The minute book contains the minutes of the meetings of the board of directors of the bank.

FINANCIAL RECORDS—The financial records of a bank are the most important ones. They have much to do with the daily work of the bank.

The following are the principal books used in a bank (see Appendix C1)—

I. *Cash Section.*

1. Counter Cash Book or Received Cash Book or Receiving Book.
2. Received Day Book or Waste Book.
3. Sectional Cash Book.
4. Paid Cash Book.
5. Coin Balance Book.
6. Paid Waste Book.
7. In Clearing Book.
8. Country Clearing Book ("Out" and "In").
9. Clearing Balance Book.
10. Cash Balance Book.

II. *Bill Section.*

11. Short Bills Book.
12. Bill Journal or Diaries.
13. Bills Discounted Book.
14. Discount Ledger and Acceptance Ledger.
15. Acceptance Book.

III. *Securities and Investments Section.*

16. Securities Register.

(a) General.
(b) Customers' Loans.
(c) Stock Brokers' or other Short Loans.
(d) Standing Orders Book.

IV. *Customer's Section.*

17. Current Accounts.
18. Deposit Accounts.
19. Loan Accounts.
20. Loans Cash Book.

V. *Profit and Loss Section.*

21. Current Accounts Analysis Book (Debit and Credit) or Short.
22. Rentals Ledger.
23. Securities Sold for Customers.
24. Securities Purchased for Customers.
25. Salaries Book.

VI. *Branches Section.*

26. Debit Journal.
27. Credit Journal.
28. Cheques Remitted.
29. Cheques Received.

STATISTICAL RECORDS—As regards the statistical records, it should be remembered that every large trading concern, in modern times, collects certain kinds of statistics in order to obtain accurate information about its progress from time to time. For instance, it is the statistics collected by a bank, that, enable the banker to see whether the bank is progressing or retrogressing and ascertain reasons for the same. Certain kinds of banking statistics have a great educative value.

Their advantages. Much information is gathered by means of statistics, which are summarized for the use of those who control the business. In order to watch carefully the work of a bank, it is necessary to classify loans, deposits, income and expenditure. With the help of statistics, the general manager of banking corporation will be able to find out the causes for increase or decrease in the profits of the bank. It may, perhaps, be desirable to collect statistics pertaining to the following facts and summarize them:—

(1) New accounts opened and the amount of initial deposits.
(2) Accounts closed.
(3) Deposits received and the amount paid out each month, in the various departments.
(4) Number of cheques paid.
(5) Number of cheques, bills, and other items collected in each month.

UNSATISFACTORY STATISTICS RELATING TO BANKS IN INDIA—Despite the great importance of the banking statistics, it is regrettable to note that the statistical tables relating to joint stock banks in India, used to be stale by at least two years. For example, the tables published in 1936 were those for the year 1934. Thanks to the interest taken by the authorities of the Reserve Bank of India, improvement in this direction has been made not only by providing the public with such statistics without much delay but also by making them more comprehensive than was the case when the publication in question was issued by the department of Commercial Intelligence and Statistics. In this connection we are glad to observe that, as suggested in the earlier editions of the book, statistics relating to the number of cheques cleared through the banking clearing houses in India also are being published. We would like to see for comparison the figures of the previous week and preferably also of the corresponding week of the previous year being published along with the weekly figures.

Statement showing the relation between the Paid-up Capital, Deposits and Profits of some of the important English and Indian Joint-Stock Banks.

Name of the Bank.	Paid up Capital.	Reserve Fund.	Total of Cols. (2) & (3)	Deposits.	P.C. of Cols. (4) to (5)	Net Profit	P.C. of Net Profit to Paid-up Capital.	Dividend	Remarks.
1	2	3	4	5	6	7	8	9	10
			English Banks	(1943)					
Barclays Bank, Ltd.	15,858,217	11,250,000	27,108,217	822,499,871	(a) 3.3	1,584,113	10.0	14	
Lloyds Bank, Ltd. . ..	15,810,252	10 000,000	25,810,252	727,916,379	3.5	1,515,002	9.6	12	
Midland Bank, Ltd.	15,158,621	13,410,609	28 569,230	859,692,182	3.3	1,984,396	13.0	16	
National Provincal Bank, Ltd. ..	9,479,416	9,179,116	18,958,832	521,342,279	3.6	1,256,395	13.3	15	
Westminster Bank, Ltd.	9,320,157	9,320,157	18,640,314	541,789,356	3.4	1,347,815	14.5	18	
			Indian Banks	(1944)					
	Rs. (000)	Rs. (000)	Rs. (000)	Rs. (000)		Rs. (000)			
The Imperial Bank of India, Ltd.	5,62,50	6,00,000	11,62,50	237,78,30	4.9	43,55	7.7	12	
The Central Bank of India, Ltd.	2,51,02	2,02,00	4,53,02	94,48,67	4.8	1,17,44	46.8	10a	
The Bank of India, Ltd.	1,48,36	1,74,86	3,23,22	60,82,72	5.3	65,37	44.1	11b	
The Allahabad Bank, Ltd. * ..	35,50	58,00	93,50	20,85,02	4.5	17,29	48.7	12c	
The Bank of Baroda Ltd. ..	1,00,00	1,00,000	2,00,00	26,39,00	7.6	23,64	23.6	10d	
The Punjab National Bank Ltd.	58,10	63,00	1,21,10	37,75,82	3.2	22,93	39.4	9	

a. Excluding a bonus of annas four per share.

b. Excluding bonus of 1% for the second half-year ended December.

c. Excluding a bonus of 6 per cent.

d. Excluding a bonus of annas eight per share for the half-year ended December 1944

* Balance sheet of March 1944.

CHAPTER IV

BANKERS AS BORROWERS

As already explained, the relationship between a banker and his customer is ordinarily that of creditor and debtor, the relative position being ascertained from the state of the account of the customer. Hence, two of the chief functions of a banker are the borrowing and the lending of money. We propose to take up the former first.

BANKER AS BORROWER—It may safely be said that, in modern times, there is hardly any business on a large scale which is carried on entirely with the funds of its proprietors; but in the case of the banking business, the borrowing of money is essential, for the simple reason that, if a banker is to earn more than the mere interest on his capital, he must borrow funds at rates lower than those at which they are to be lent. Of course, banks earn a part of their profits from exchange, commissions, etc., but in the case of almost all the leading commercial banks, such profits are generally a small fraction of their total profits. The major part of their profits is earned by the employment of the funds deposited with them. It is, therefore, found generally that the smaller the percentage of paid-up capital to the deposits of a bank, the higher is the rate of dividend declared, as will be seen from the statements given at *p.* 78.

FORMS OF BORROWING—Bankers borrow money by issuing bank notes, receiving deposits, drawing bills of exchange, issuing bonds, debentures, and cash certificates. As the note issue function is generally the monopoly of the central bank of a country and as the issue of bonds, debentures and cash certificates, is by no means very popular with commercial banks, the main source of supply of their borrowed funds is the receipt of deposits. This is particularly true of banks in India.

ISSUE OF BANK NOTES IN ENGLAND—The issue of notes by a bank was considered to be the most important function of banks in England until the beginning of the second quarter of the last century. Till 1825, no joint stock bank other than the Bank of England was allowed to issue notes in the country and consequently it was believed, though erroneously, that the bank had a monopoly of joint—stock banking. No other joint stock bank was, therefore, started till 1825, when the monopoly of note issue given to the bank was restricted to a radius of 65 miles from London. The success of these institutions proved, beyond doubt, that banks could succeed even without the right of issue. The Bank Act of 1844 not only put a stop to the establishment of new banks with the right to issue notes, but also laid restrictions upon the powers of the then note-issuing banks other than the Bank of England, and limited the note-issue of each of them to its average circulation during the twelve weeks before the 27th April, 1844. This did not prevent the starting of new banks, as it was found that there was a vast field for banking business other than that of issuing notes. Even the banks, having the right to issue notes, either relinquished the same, or lost it on account of their amalgamation with other banks having London offices which could not issue notes. Some of the country note-issuing banks surrendered the right on the opening of offices within the radius of sixty-five miles from London. However, it was largely on account of the growth in importance of other kinds of banking business, that out of the two hundred and seventy-nine banks, other than the Bank of England, which were allowed to issue bank notes, not one has continued to do so.

U. S. A. AND EUROPE—*In the United States of America, this function of the National banks has been falling into the background. Although bank notes are still used to a large extent in several European countries, efforts are being made to replace them by cheque currency.*

INDIA—In India, before the introduction of the Government currency notes in 1862, the three Presidency Banks had the right to issue notes, but their notes, not being popular, did not circulate to any appreciable extent. For many years, even after the Government of India took over the issue of notes, the use of paper money did not become popular, largely owing to the want of public confidence in this form of currency. With the spread of education and expansion of trade, currency notes have begun to play an important part in the currency system of this country. Until the Reserve Bank of India was established in 1935 there was a strange anomaly in India, in that the management and control of credit and currency were not in the hands of a central bank, as has been the case in most of the other leading countries. There was a sort of diarchy, as the control of credit was vested in the Imperial Bank of India, while the Government continued to be the supreme currency authority. Although at the time of the amalgamation of the three Presidency Banks in 1920 it was hoped that the control of credit and currency would be centralised it is regrettable to note that until 1935 nothing of the kind was done when the Reserve Bank of India came to be vested, for the first time in the history of the country, with a full control of its credit and currency policy.

ISSUE OF BONDS AND CASH CERTIFICATES BY BANKS—In certain western countries, Germany, for instance, some banks borrow large sums of money by the issue of bonds and debentures, payable after a certain number of years; but this method is unknown in England and has not been adopted, to any large extent, by banks in the United States of America. In recent years some banks in India have been selling cash certificates payable after three to five years, but this method of borrowing funds has not yet assumed any great importance.

Bank Deposits.

FORMS OF DEPOSITS—In India, bank deposits take three different forms—Fixed Deposits, Savings Bank Deposits, and Current Deposits.

Fixed Deposits.

EXPLANATION—The term "fixed deposits," means deposits repayable after the expiry of a certain period which ordinarily varies from three months to five years. Fixed deposits are also received for shorter periods than three months, but generally for not less than a month. In England, the term "fixed deposit" is not generally used, as the banks there receive deposits repayable subject to seven or fourteen days' notice. In the case of fixed deposits, the period of the deposit is usually fixed at the time the deposit is made. The fixing of the period enables the banker to invest the money, or, otherwise employ it in his business without having to keep a reserve and this is one of the reasons why "fixed deposits" are so popular with bankers in India.

RATIO BETWEEN CURRENT AND FIXED DEPOSITS—Almost all banks in India used to borrow large sums of money by means of "fixed deposits", until a few years ago but as all of them did not give, in their balance-sheets, separate figures of different kinds of deposits, it was not possible to state with certainty the proportion between "current deposits" and deposits payable after the

expiry of a "certain period". An examination of the balance-sheets of some important banks, which gave figures of their deposits separately, showed that the ratio between current and fixed deposits varied from 1 to. 8 to 1 to 4. This large variation in the ratios was due to several factors; in the first place, a large majority of a bank's customers happened to consist of persons, who, for one reason or another, did not make use of the cheque currency; whereas, a large number of the customers of another bank used cheques to a large extent. In the second place, some banks, as is the case with some district co-operative banks, invest their funds in such securities as cannot be easily realized; therefore, they are not very keen to receive current deposits. However, in recent years the amount of the demand liabilities representing very largely the current deposits of the commercial banks in India and Burma has gone much ahead of the amount of time liabilities which shows that cheque currency is growing steadily as will be seen from the following statement :—

COMMERCIAL BANK DEPOSITS

(000,000)

	Demand deposits	Time deposits	Total	Month
U.S.A. (dollar)	83,588	33,795	117,383	June 30, 1944
Japan (Yen)	16,318	21,586	37,904	December, 1943
India (Rupees)	604 3	220 3	824.6	March, 1945
United Kingdom (£)	2,922	1,175	4,397	November, 1944
Canada (C. dollars)	1,894	2,370	1,264	August, 1944
Australia (A £)	326·6	217 7	544.3	April, 1944
South Africa (S.A.£)	203·8	23.9	227.7	November, 1943

FIXED DEPOSITS AS INVESTMENTS—Customers usually lodge their money as "fixed deposits", with banks with a view to earn interest, as well as to withdraw the same on the expiry of the stipulated period, in case they happen to require it either for meeting certain expenses or employing it in a more remunerative manner. A good number of the investors in this country preferred this form of investment to industrial securities, of which they knew next to nothing and also as they did not want to run any risk of depreciation of their capital.

DEPOSIT RATES IN INDIA—Except in the case of "winter season deposits", which banks may accept during the season when the money-market gets tight, the longer the period during which the money is to remain with the banker, the higher is the rate of interest offered by him. In these days of cheap money, banks offer ½ to 2½ per cent. interest on deposit for three to twelve months. The rate depends not only upon the length of the period and the amount deposited, but also upon the credit of the bank and the state of the money-market.

IN ENGLAND—In England the bank rate, by which is meant the official minimum discount rate of the Bank of England and not the loan rate (in which sense the term is used in connection with the rate of the Imperial Bank of India), governs the deposit rates. Till 1921, English banks used to receive such deposits at one and a half per cent. below the bank rate with certain maximum and minimum rates, but, in that year, owing to the increase in the expenses of management, they reduced the deposit rates by raising the difference between the bank rate and their deposit rates to two per cent. This is generally the

case with London banks, but country banks still receive deposits at one and a half per cent. below the bank rate. This difference in practice between the English banks and the banks in India, is largely due to the fact that the former invest their funds largely in the discounting of bills, upon which the discount rate charged varies with the bank rate, which is usually about a half per cent. higher than the rate charged for first class bills. This form of employment of funds by the banks in England enables them to repay their deposits after a short notice, which, in actual practice is generally dispensed with, provided the customer has no objection to pay interest for seven to fourteen days, the period of the notice required to be given. In India, on the other hand many banks, invest the major part of their funds in loans carrying interest at one to two per cent. above the bank rate; and these loans, in practice, cannot be easily converted into cash at short notice. Consequently, it is necessary for banks in India to require a longer notice than is the case in England.

LEGAL POSITION. The legal position of the banker in connection with fixed deposits is one of a debtor who is not bound to repay the amount before its due date. Some banks reserve to themselves the right to repay deposits before their maturity by giving due notice. This condition, along with others are printed on the back of the deposit receipt and when the customer's attention is drawn to them they will govern the contract between the banker and his customer. In the absence of such a stipulation the banker cannot return a fixed deposit before the due date without the consent of the customer. The banker continues to be a debtor, even though the period fixed for the deposit has expired and the deposit is not withdrawn and although the banker may not allow interest after the deposit has matured for payment. He does not become a trustee for the customer of the funds so lying with him (*Pearce* v. *Creswick* (1843), 2 Hare 286 and *Official Assignee of Madras* v. *Smith* (1908) I.L.R. 32 Mad. 68, followed in *Subramaniam* v. *Kadiresan*, 39 Mad. 1081).

PAYMENT OF FIXED DEPOSITS BEFORE DUE DATE.—In order to oblige their customers, bankers occasionally allow them to withdraw their fixed deposits before their due dates. In such cases, either the customer foregoes the interest accrued on the deposit, or he borrows the amount required against the security of his fixed deposit at a rate of interest which is generally one to two per cent. higher than the rate allowed on the deposit. In the latter case, the banker's advance is fully secured, as there can hardly be any security better than the amount due from the banker to the customer. It is sometimes said that the banker adds to his reputation by giving his customers such facilities. It nevertheless appears to be a practice which ought to be discouraged. By permitting the withdrawal of fixed deposits before their maturity, the banker impairs his own cash resources and thereby runs certain risks in case of the tightness of the money-market. If the funds kept in hand for meeting the demands of his customers having current deposits and others requiring accommodation are used in repaying fixed deposits before maturity, the banker may find himself in difficulties. Again, if, on the occasion of a financial crisis, a banker permits the withdrawal of some fixed deposits before the due dates and then stops doing so, as was done by a certain well-known bank in the Punjab at the time of the banking crisis in 1913, he is bound to suffer in reputation. At such times, indeed, it will be the duty of a banker to keep his funds as liquid as possible and to keep more cash readily available than is necessary in normal times and he should not deplete, therefore, his cash resources by paying such deposits before their maturity so as to save some interest.

DEPOSIT RECEIPTS—When depositing his money, the customer receives a deposit receipt which is usually marked "not negotiable" (see Appendix A, form No. 5, *post*). It can, of course, be transferred by way of assignment to a third party, but a deposit receipt, not being a "negotiable instrument", cannot pass to its transferee a better title than that of the transferor, and, therefore, such receipts cannot be treated like cheques. A "deposit receipt," even if it is expressed to be transferable, has never been recognized as a "negotiable instrument", or as giving the transferee the right to sue in his own name (*in re Dillon* (1890), 44 Ch. D. 76, *In re Mead* (1880), 15 Ch. D. 651).

NOT NEGOTIABLE—In *Abdul Rehman Haji Osman* v. *Central Bank of India and others* (The Journal of the Indian Institute of Bankers, January 1930, p. 54), Mr. K. M. Jhaveri, Chief Judge of the Small Causes Court, Bombay, observed, while delivering judgment against the bank, that the fixed deposit receipt with the words "not transferable" printed on the top of it, was not a negotiable instrument and that it could not be transferred by a mere indorsement in blank. In this case, the receipt was indorsed and delivered to the second defendant, as security for the faithful performance of his duties by the plaintiff and it was not intended that the ownership should be transferred. It is, however, possible that a bank, having issued the document in a transferable form, might be estopped from disputing its character as such. In England, a form of cheque is sometimes printed on the back of a "deposit receipt." In such a case, if the conditions of the deposit, such as previous notice, etc., have been fulfilled, the bank cannot, as between itself and the depositor, refuse to pay the holder of the receipt (*In re Mead* (1880), 15 Ch. D. 651). Payment to a person wrongfully dealing with even a signed deposit receipt, is no discharge to the bank, unless the depositor is estopped by his conduct from disputing such payment (*Evans* v. *National Provincial Bank of England* (1904), 13 T.L.R. 429), and the banker should, therefore, obtain a "letter of authority" from the customer before paying back a deposit to a person other than the depositor.

CHEQUES NOT TO BE DRAWN AGAINST FIXED DEPOSITS—In the absence of an agreement, valid cheques cannot be drawn against a deposit account at all, if that is the only account of the customer with the bank. Bankers in England usually honour such cheques, relying upon lien or set-off, either of which right applies to a deposit account. It appears, however, that even after expiry of the fixed period the depositor is not entitled to draw cheques against the fixed deposit, unless he has either made such arrangements with the banker or has given instructions to him to transfer the amount to his current account.

POSITION OF THE DEPOSITOR IN CASE OF LOSS OF DEPOSIT RECEIPT—Whether the return of the deposit receipt to the banker is a condition precedent for the repayment of the loan, depends to a great extent upon the terms and conditions of the deposit. If the return of the deposit receipt is made a condition for payment, no cause of action would then arise until its return (*Atkinson* v. *Bradford, Third Equitable Benefit Building Society* (1890), 25 Q.B. D. 377; *In re Tidd, Tidd* v. *Overell* (1893), 3 Ch. 154. To the same effect see the remarks of Scott, J., in 38 Bom. 618 (628)). In case of the loss of the receipt, however, a court would exercise its equitable jurisdiction and would not allow the depositor's failure to produce the receipt to stand in the way of his reclaiming the money (*In re Dillon* (1890), 44 Ch. D. 76). The court would not probably require the depositor to give an indemnity bond, as a "deposit receipt" is not a "negotiable instrument" and its transfer cannot confer any better title on the transferee than that of the transferor.

THE LAW OF LIMITATION—The law of limitation does not apply to a "fixed deposit" as long as interest is being paid on it, or so long as the deposit receipt is being renewed. If the deposit receipt has not been renewed, however, the period begins to run from the date on which the depositor was entitled to be repaid.

ATTACHMENT OF DEPOSITS BY COURTS—Whether a particular deposit account is attachable by a garnishee order *nisi*, depends on the terms of the order. To be affected by the order, it must be a debt, "due, or, accruing due," that is, due or accruing due at a definite and certain date (*Webb v. Stenton* (1883), 11 Q.B.D. 518). The Law of British India on the subject is contained in section 60 of the Code of Civil Procedure. The word "debt", as used in that section, must be a debt which is actually existing and not a claim that may ripen into a debt at some future time. An existing debt, though payable at a future date may be attached, whilst a salary, wages, or a money claim accruing due cannot (*Tuffazal Hossein Khan v. Raghonath Prasad* 14 Moo. I.A. 40).

The following kinds of deposits are attachable :—

(*a*) a deposit repayable on demand;
(*b*) a deposit repayable on fixed notice, which has been given;
(*c*) a deposit repayable at a fixed future date, or after the lapse of a specified time.

When moneys lying at the credit of a customer, are attached by an order of a court, it will depend on the terms of the order of attachment whether the entire balance standing to the credit of the customer is to be attached, or only such part of it as is necessary to satisfy the decree in execution where of the order of attachment is made (*Rogers v. Whiteley*, [1892] A.C. 118).

Donatio Mortis Causa—A deposit receipt may be the subject of a *donatio mortis causa* (*In re Dillon, Duffin v. Duffin* (1890), 44 Ch. D. 76) and the court will compel the legal representatives of the deceased to facilitate the receipt of the money by the donee. However, a deposit account book which did not contain any of the terms of contract between the donor and the bank was held to be not a document of title which could be made the rightful subject of a valid *donatio mortis causa*.

EXEMPTION FROM STAMP DUTY—Banker's deposit receipt is exempt from stamp duty, provided the deposit is not expressed to be received from, or by the hands of, any person other than the one to whom the same is to be accounted for (see the Indian Stamp Act, 1899 (II of 1899), Schedule I, Article 53). The exemption holds good though a time be fixed for repayment. Nor does provision for the payment of interest affect the question.

DEPOSITS IN JOINT NAMES—Deposits are frequently received by bankers in the joint names of two or more persons and the conditions subject to which such deposits are accepted regulate the manner of their withdrawal. According to English law, a payment to any one of the joint creditors gives a complete discharge to the debtor (*Wallace v. Kelsall*, 7 M.W. 264). This case was followed in India in the Full Bench decision of the Madras High Court in *Annapurnamma v. Akkayya*, 36 Mad. 544. The Madras decision has, however, been doubted in the subsequent cases and was expressly dissented from in the Full Bench decision of the Rangoon High Court (1937) Rangoon 227. The better view seems to be that, considering the clear language of section 45 of the Indian Contract Act (IX of 1872) *Wallace v. Kelsall* has no application in India and a debtor only obtains a discharge on payment to all the joint creditors. In Eng-

land also the principle of *Wallace* v. *Kelsall* has not been extended to bankers receiving money on joint accounts. In *Husband* v. *Davis* 10 C.B. 445, it was said by counsel, *arguendo*, that " In *Innes* v. *Stephenson*, 1 Moore Role 145, it was ruled by Lord Tenterden that where money is paid into a bank on the joint account of persons not partners in trade, the bankers are not discharged by payment to one of those persons, without the authority of the others." If however, by the terms of the deposit receipt, authority to pay is given to any one of the joint depositors, then obviously payment in accordance therewith will discharge the banker. Such an authority may, however, be revoked before payment in which case concurrence of all the joint depositors is necessary to give a valid discharge to the bank. In *McEvoy* v. *The Belfast Banking Co.*, [1935] A.C. 24, the legal effect of a deposit receipt taken out in the joint names of two persons was considered at great length by Lord Atkin but the conclusions there reached by the majority of the Law Lords have left several important points undecided. One of the points which arose in that case was, if, for example, *A* deposits moneys in a bank and obtains a deposit receipt in the joint names of himself and his minor son payable to either of them or survivor, is the minor son a party to the contract in the sense that on the death of *A*, he could demand the money from the bank or sue if his demand is refused ? Lord Atkin expressed the definite opinion that the minor son could sue because the contract on the face of it purported to be made with *A* and his minor son. If *A* did make such a contract without the minor's authority, it was open to the latter to ratify it at any time and the ratification could relate back to the original formation of the contract. Lord Thankerton, on the other hand, was of the view that the contract was with *A* alone, though it might have been made for the benefit of the minor. Lords Warrington and Macmillan side-stepped this important issue by holding that the point did not arise for decision in the case.

Savings Bank Deposits.

Savings bank deposits are not so important to bankers as fixed or current deposits but their early history is quite interesting.

TRUSTEE SAVINGS BANKS– Savings bank deposits take their origin in the trustee savings banks, which are institutions in the nature of banks established for the receipt of moneys from depositors, without any benefit accruing to the trustees or organizers (Trustee Savings Bank Act, 1863 (26 & 27 Vict., c. 87), section 2). A depositor of a Trustee Savings Bank in England can deal with only one such bank at a time and cannot have more than one account at one and the same time. Any breach of this rule involves forfeiture of any amount illegally deposited, or of so much thereof as the National Debt Commissioners may think fit. Exception is made in the case of ordinary deposits by " Friendly Societies ". Not more than £50 can be deposited by any depositor with any trustees savings bank in one year, whether any sum has been previously withdrawn or not ; nor can any deposit be received, which would bring the aggregate amount to over £200. Deposits may be received from and repaid to, infants and married women. These trustee savings banks encourage thrift among people of small means, by accepting small deposits, which at one time were not looked upon favourably by banks.

POSTAL SAVINGS BANKS—Similar objects are served by post office savings banks, which were first established in England by the Post Office Savings Bank Act, 1861 (24 & 25 Vict., c. 18), and the facilities of the post office savings banks are now available in all English towns, as well as villages, where the post office transacts savings bank business.

Savings banks in India—In India, trustee savings banks were first established in the Presidency towns between 1833 and 1835 and their management was transferred to the Presidency Banks in 1863-64. In 1870, district savings banks were opened in certain selected treasuries and twelve years later, post office savings banks came into existence in all principal post offices in the whole of India, except the Bombay Presidency. This exception and certain other restrictions in other parts of India, were the result of special arrangements made with the presidency banks to whom the management of the old government savings banks was entrusted. However, these restrictions were removed after a year. The post office savings banks continued side by side with the district savings banks, for about three years, after the expiry of which period the latter were abolished, but the government savings banks in the three presidency banks, continued till 1896.

Progress of Postal Savings Banks—The popularity of the postal savings banks in India can be judged from the following statements showing the growth in number of post office savings banks' depositors and the total deposits:

Number of Post Office Savings Banks, Accounts and Amounts of Deposits.

Year	No. of Banks at the end of the year	Number of Accounts at the end of the year	Deposits (inclusive of interest)	Balance of Deposits (inclusive of interest)
1934-35	12,679	3,100,368	40,01,06,725	58,30,17,851
1935-36	12,926	3,541,553	47,83,19,692	67,25,17,252
1936-37	12,611	3,795,273	49,08,19,661	72,52,89,125
1937-38	12,631	3,786,495	44,72,14,095	77,49,14,177
1938-39	12,109	4,240,791	46,01,49,961	81,86,02,752
1939-40	11,870	4,582,752	41,67,33,378	78,31,56,685

Note:—From 1936-37 and onwards, figures for Burma and Aden are excluded.
(*Annual Report of the Indian Posts and Telegraphs Department*).

Savings bank department in commercial banks—The commercial banks found that it was a paying business to take in such deposits, however small they might be. The advantages of such deposits to a bank are that a very small reserve is sufficient to meet demands on them, as, generally, a depositor is not allowed to withdraw more than a fixed amount, Rs. 500 to 1,000 in any one week. Larger sums may be withdrawn after giving two to four weeks' notice. Moreover, some banks do not permit such accounts to be operated upon by means of cheques, so that the banker does not run any risk in connection with paying out cheques Interest is generally allowed on minimum monthly balances and not on daily balances. Some banks, including the post office savings banks, allow interest on deposits received up to the fourth of a month, so as to enable those receiving small salaries to deposit their money and earn interest thereon. Banks incur little expense on such accounts, so far as stationery is concerned, but very often they give their customers such privileges as the collection of cheques and safe custody of valuables or securities.

Current Deposits.

Although formerly current deposits did not contribute to the capital of the banks in India such large amounts as did the fixed deposits, the position has undergone a considerable change in recent years and today the amount of

demand liabilities of the scheduled banks in India and Burma is in the ratio of about thirteen to ten. However, in the matter of the responsibilities thrown on the bankers, the current deposits have always been more important than the fixed deposits as will be evident from the treatment of the subject by the present writer as well as other authors on banking law.

BANKER'S OBLIGATION.—By taking such deposits, the banker undertakes to honour his customer's cheques as long as his account is in credit. The banker may have to suffer loss if he pays a forged cheque, or, if he pays a cheque contrary to the instructions of his customer, as would be the case if the banker paid a generally-crossed cheque to a non-banker, or a specially crossed cheque to a banker other than the one in whose favour it was crossed, or to his agent for collection (Negotiable Instruments Act, 1881 (XXVI of 1881), section 128). The customer has to pay for the stamps on the cheques if they are liable to stamp duty, but the cheque-forms as well as the pass book are supplied free of charge by the banker (see Appendix A, form No. 18, *post*). The banker has to keep sufficient funds in hand to enable him to meet the demands of his customers.

INTEREST.—Except in large cities most banks do not allow any interest on current deposits. In cases where interest is allowed, amounts exceeding rupees one lakh are generally subject to a special arrangement. Sometimes, customers are required to maintain a minimum balance, failing which they have to pay bank charges either in the form of commission on the half-yearly turnover of the account or a certain sum of money every half year. This practice enables the banker to earn something on the minimum balance agreed to be kept. Thus, if a banker has one hundred such accounts and the minimum balance for each account is Rs. 500, he can freely employ Rs. 50,000. Of course, his experience will teach him what proportion of the current deposits he must keep as reserve, so as to meet the demands of depositors. In the case of fixed deposits, he knows exactly what maximum amount he can be called upon to pay at any given time; whereas, in the case of the balances on current accounts, he can only approximately estimate the demands that are likely to be made upon him, and, therefore, he has to keep larger funds to meet emergencies.

NO INTEREST ALLOWED IN LONDON.—In London, also, only a few banks allow interest on current deposits. The practice generally followed there, is not to allow any interest on current accounts, except when they are subject to any special arrangement between the banker and the customer whereby a very small rate of interest may be allowed if the account is a substantial one. On the other hand, if the monthly balance goes below a certain amount, the banker would charge a commission, which may be a fixed amount per annum, or, about one-eighth to one quarter per cent. on the turnover.

Opening of a New Account.

LETTERS OF INTRODUCTION OR REFERENCE.—Before opening a new account, a banker should take certain precautions and must ascertain by inquiring from the person wishing to open the account, if such person is unknown to the banker, as to his profession or trade as well as the nature of the account he proposes to open. By taking the references furnished by the new customer, the banker can easily verify such information and judge whether or not the person wishing to open an account is a desirable customer. It is necessary for a bank to inquire, from responsible parties, given as references by the customer, as to the latter's integrity and respectability, an omission to do which may result in

serious consequences not only for the banker concerned, but also for other bankers and the general public.

PRECAUTION AGAINST FRAUD—From time to time, instances of fraud committed by persons in possession of cheque books have come to our notice. For instance, some years ago a well-dressed person approached the manager of a bank in Delhi with a request to open an account in his name and feigning to have forgotten to bring his purse containing currency notes to be deposited, persuaded the manager to part with a cheque-book containing sixteen stamped cheques for which he paid one rupee—the amount of the stamp duty—and promised to send the money to be deposited on the following day. Having obtained possession of the cheque-book, he succeeded in persuading certain merchants to part with their goods in exchange for his cheques which were subsequently found to be worthless as their drawer had no account with the bank upon which they were drawn. In fact, as a result of the failure to make the necessary inquiry referred to above, the banker might enable a dishonest person to obtain, for fraudulent purposes, the possession of a cheque-book and if such a person happens to be an undischarged bankrupt, the banker might be placed in a difficult position by unwittingly allowing such a person to operate on his account with the bank.

SAFEGUARD AGAINST AN INADVERTENT OVERDRAFT—*Secondly*, although the banker may not intend at the time of the opening of an account, to grant an overdraft to the new customer, an overdraft may be granted inadvertently; in such a case, the importance of getting a letter of introduction or references from the new customer can be well understood. For instance, if a bank clerk, by misreading the balance at the credit of the new customer's account, honours his cheque, it will amount to the grant of an overdraft, which can be realized only if the customer is a respectable party. Similarly, a credit item belonging to a particular customer may be placed to the credit of the account of another customer, who may draw the amount and then decamp.

INQUIRIES ABOUT THE CUSTOMER—*Thirdly*, the banker has to answer inquiries from fellow bankers about his customer's financial position; it is, therefore, desirable both in the interest of the banker as well as his customer, that the former should be in possession of such information.

EVIDENCE OF NEGLIGENCE—*Fourthly*, if the banker fails to make the usual inquiries about the new customer, the banker may be deprived of the statutory protection given to a collecting banker under section 131 of the Negotiable Instruments Act, 1881 (XXVI of 1881). In *Ladbroke* v. *Todd* (*Times* (London), 28th March, 1914), Justice Bailhache said, "the bank acted negligently, for they did not make ordinary inquiries which ordinary, reasonable people, according to the evidence before me, should make in opening an account." It is very likely that the general practice of bankers in India making such inquiries at the time of opening new current accounts as is referred to in the judgment, will be forthcoming.

SPECIMEN SIGNATURES—Every customer is expected to have read the rules of business of the bank and to confirm in writing his willingness to comply with and be bound by them before his account is opened (see Appendix A, form Nos. 6 and (*a*), *post*). He is required to supply his banker with one or more specimens of his signature and these are usually entered in a signature book maintained for the purpose by the bank. However, the modern practice is to have the specimen signatures on cards, which are indexed and filed in an

alphabetical order. Each customer's full name should be written in bold characters above his account in the ledger; his address and occupation should also be added.

MANDATE FOR THE OPERATION OF THE ACCOUNT BY AN AGENT—In case a customer desires that his account be operated upon by another person, a mandate (see Appendix A, form No. 6 (*c*), *post*) in writing to that effect, as well as the specimen signature of the person in whose favour the mandate is given, should be obtained by the banker. Power to draw and indorse cheques does not include power to accept bills or overdraw the account; it is, therefore, necessary, that the customer's instructions to his banker should specifically state so, if he wishes the banker to allow the person to overdraw the account. The banker should have notes of such instructions of his customers entered on the ledger accounts of those customers.

CUSTOMERS TO BE SUPPLIED WITH PAYING-IN-SLIP BOOKS—With a view to facilitate the receipt of credit items paid in by a customer, bankers provide the customers with paying-in-slip books (see Appendix A, form No. 16, *post*). The right hand portion is retained by the bank and the counterfoil is returned to the customer duly initialled by an officer of the bank.

BANKER NOT CONCERNED WITH THE CUSTOMER'S TITLE TO MONEY DEPOSITED—In the absence of a notice, explicit, or implied, the banker is not concerned with the question of the customer's title to money paid in by him. Money may be paid into a customer's current account by a third person, which the banker is ordinarily bound to accept.

Special Types of Customers.

Any individual is legally capable of opening an account with a banker if the latter is satisfied as to that person's *bona fides* and if he is willing to enter into the necessary business relations with former. The capacity of certain classes of persons, however, to make valid agreements is subject to well recognized restrictions, as is the case with minors, lunatics, drunkards, married women, undischarged bankrupts, agents of all kinds, trustees, executors, administrators, etc. We shall, therefore, consider the position of a banker with regard to these special classes of customers and the precautions which he should take in his dealings with them.

MINORS OR INFANTS—*Definition.*—According to the Indian law until a person completes his eighteenth year he is regarded as a minor, unless, before the completion of his eighteenth year a guardian of his person or property is appointed by a Court, in which case the minority extends to the age of twenty-one; see the Indian Majority Act, 1875 (IX of 1875), section 3. Under the English law, a person continues to be a minor until he, or she, completes his or her twenty-first year. This law applies also to the descendants of persons of British domicile, unless they have taken a new domicile.

Minor's right to repudiate his contracts.—As a general rule, a minor can repudiate all his contracts at his option. A bill or cheque given by an infant to repay money borrowed by him during his infancy, is entirely void. He cannot even be compelled to repay the money actually borrowed by him, notwithstanding that he has obtained the loan by falsely representing himself to be of full age.

Minor's account.—A current account may be opened in the name of a minor and the banker runs no risk in dealing with him, as long as his account

is in credit. In view, however, of the fact that a contract with a minor is void, it is advisable to open the account in the name of his guardian. This will enable the banker to recover the amount of the overdraft which he may have granted even by mistake. Otherwise, not only the money advanced to a minor is irrecoverable, but also any securities pledged by him must be returned. Similarly, an adult, who gives a bill in respect of a debt contracted during minority, cannot be sued for the same, except in due course, by the holder who was ignorant of the circumstances under which the bill was given. Although having no capacity to contract and render himself liable on a bill or cheque, a minor may still draw or indorse a cheque or a bill and the instruments so drawn or indorsed by him are nevertheless valid against all parties except the minor.

Minor as agent.—A minor person may not be legally capable of entering into a contract in his own name, but there can be no objection to his acting as an agent for another person competent to contract, provided the former is duly authorized by the latter. For instance, a minor son may make contracts, besides indorsing cheques and bills, on behalf of his father, if the latter has duly authorized the former to do so. Moreover, if he has distinct authority, he may purchase goods and obtain advances in the name of his principal, although it would be clearly to the advantage of the other parties to such contracts to obtain written confirmation of such authority, before acting under such instructions.

Minor as partner.—There is nothing to prevent a minor from becoming a partner in a firm and transacting business on its behalf. However, he cannot be held liable for any debts of the partnership incurred before he attains majority. On the other hand, unless he expressly repudiates the contract of partnership within six months of his attaining majority, he will be regarded as having ratified the agreement and will become liable as a general partner for all debts incurred by the partnership since he was admitted to the benefits of partnership (section 30 of the Indian Partnership Act, 1932 (IX of 1932) 24 R.R. 307 ; (1918) 41 Mad. 824).

LUNATICS—*Their legal disabilities.*—Under section 11 of the Indian Contract Act, 1872 (IX of 1872) persons of unsound mind like minors—are disqualified from contracting, but the disqualification does not apply to contracts entered into by lunatics during the period of sanity or which are ratified during such periods. Contracts with persons of unsound mind under English law, are not void but voidable. Thus, it will be clear, that such contracts have no inherent defect but can be avoided, provided the other party is aware of the fact of lunacy of the first party.

CONTRACT VOID IN INDIA—Under the Indian law, however, contracts with persons of unsound mind, made when they are of unsound mind, are, it is submitted, not only voidable but void (*Machuarna* v. *Usman Beari* (1907), 17 Mad. L.J. 78). Consequently, no banker would knowingly open an account in the name of a person of unsound mind, because that would easily involve him "in the difficulty of choosing between the risk of unjustifiably dishonouring the customer's cheques, on the one hand and of being held to have debited his account without adequate authority on the other" (Hart's Law of Banking, third edition, p. 145). However, a banker who discounts a bill duly drawn, accepted, or indorsed by a lunatic, can realize the money due thereon from him, unless it can be proved that the banker knew of the fact of the lunacy of the party at the time of discounting. But when a banker comes to know of his customer's lunacy, all operations on his account should be suspended until the receipt of an order from the Court, or the definite proof of the customer's sanity.

DRUNKARDS—*Limitation on right to contract.*—The law recognizes contracts, only when the parties to them are of sound mind and in full possession of their faculties at the time of their making. If a person, who is party to a contract, can prove that, at the time of entering into the contract, he was incapable, from the effect of liquor, of understanding the contract and of forming a rational judgment as to its effect upon his interest, which fact was known to the other party, he may have the contract set aside by the Court. Generally, drunkenness is not considered to affect a person's power to contract, yet with a view to prevent people from taking any undue advantage of a drunken person, he is allowed to evade liability on instruments to the person who improperly induced him to sign them, provided the Court is satisfied that the person was so drunk as to be unable to know what he was doing. In case, however, the instrument has passed into the hands of a holder, who takes it in good faith and for value, the instrument will remain a valid one. If a customer tenders when drunk, a cheque for which he demands payment, the banker would be advised to have a witness to the signature and the payment of the amount.

MARRIED WOMEN—*Legal position.*—A current account may also be opened in the name of a married woman. Opening an account constitutes a binding contract with the married woman. She has power to draw cheques and give a sufficient discharge and *bona fide* dealing with the account cannot subsequently be questioned to the prejudice of the banker. In the case of an overdraft, the banker will have no remedy against her if she has no separate estate—and even if she has separate property such as *Stri-dhan*, the presents given to a married Hindu woman, the property may be settled upon her in such a way that she can only use the income as it falls due and can neither touch the corpus nor the anticipated income. In England as a result of the passing of the Law Reform (Married Women and Tortfeasors) Act, 1935 (25 & 26 Geo. 5, c. 30, a married woman is precisely in the same position as any one else so far as her borrowings are concerned.

Liability of the husband.—A married woman cannot make her husband responsible for debts incurred by her, except in cases where she acts as his agent, or where she borrows for her necessaries or for the necessaries of the household. The husband, however, can escape liability, if he can prove that his wife was already well supplied with the necessaries of life or that he had forbidden her to borrow in his name. Again, the banker should also keep in mind the fact that, in the case of an overdraft, he will have no personal remedy against a married woman, as she cannot be committed to prison for non-payment of a judgment-debt. According to the French law, it appears that a French married woman cannot open a bank account without her husband's permission (see Impressions of French Banking; The Journal of the Institute of Bankers, November, 1929). Looking to the difficulties with which making of contracts with a married woman is beset, a banker will be well advised not to entertain any married woman's application for an overdraft, without very careful precautions to safeguard against loss.

TRADING COMPANIES AND CORPORATIONS—*Their legal entity.*—In his dealings with companies, trading or non-trading, a banker has to be very careful because the law relating to the legal person—the company—is permissive, that is what the company may do and not prohibitory or laying down what not to do, which is the case with the human being. A company is brought into existence by means of statute and enjoys a good many of the attributes of a person; its entity is separate from that of its shareholders. Current accounts may be opened in the names of corporations, whether trading or non-trading

and apart from special authority to open accounts with banks, they have inherent powers to draw valid cheques.

Precautions to be taken in opening account.—Before opening an account (see Appendix A, form No. 13) in the name of a corporation, a banker should examine the special Charter or Act, or certificate of incorporation, as granted by the Registrar of Joint Stock Companies, together with its memorandum and articles of association, copies of which should be required to be confirmed as being up-to-date, as these articles and memorandum are liable to alteration provided the necessary formalities are observed, such copies should be kept by a banker on his files. If the banker is in doubt, he can inspect the company's file in the office of the Registrar of Joint Stock Companies of the Province in which the company has its head office. In the case of a new company, the banker should see whether the first directors are named in the memorandum. This will enable him to see, whether or not, the company has a legal entity and if it has, what are the general provisions regarding its objects, capital, borrowing powers, etc., because persons dealing with a trading corporation are expected to know such provisions. He should call for inspection of its certificate to commence business. The banker should also ask for a copy of the resolution, passed by the directors of the corporation, appointing him as banker to the corporation and naming the person, or persons, authorized to operate on the account. Such a copy should be signed by the chairman of the meeting, and countersigned by the secretary of the company. It appears desirable that the mandate to the banker should refer to the following matters: (*a*) that the mandate shall remain in force until it is repealed by another resolution of the board of directors, the contents of which shall be communicated to the bankers under the signature of the directors or of the secretary of the company; (*b*) that the authority of the person or persons to sign on behalf of the company should not be confined to cheques but should extend to other orders whether the account is in credit or debit; it should even extend to the bills to be accepted on behalf of the company. Similarly, the authority for withdrawal from the bank of securities or any other property of the company together with the signing of indemnities and for arranging on behalf of the company credits for guaranteeing the bank for the discounting of bills and for the purchase and sale of securities, should be provided for to avoid trouble at a later stage. (*c*) As regards changes in the directorate and the office of the secretary, it is desirable to provide, as a convenient working rule, that the bank shall be entitled to act upon any information given to it by one of the directors or the secretary. (*d*) In the case of a company whose articles permit, with the approval of other directors, the appointment of a person as an alternate or substitute director, the banker will be well advised to see that the resolution of the board clearly lays down that the expression "director" shall be deemed to include alternate directors. The banker should obtain the specimen signatures of the persons authorized to operate on the account of the company. In the case of fairly old companies, it is also desirable to ask for copies of their balance sheets and annual reports for a few preceding years. These will help the banker to form an opinion about their financial position, etc. In the case of a public company, the banker should, before allowing operation on the account, require the production of the certificate of authority to commence business which is issued by the Registrar of Joint Stock Companies, after he is satisfied that the requirements as laid down by the law, have been complied with.

Powers to borrow implied in case of trading companies.—Borrowing powers, with or without restrictions, are generally specified in the memorandum and articles of association. Except in the case of a trading company it is necessary

that the power to borrow is especially given by the memorandum and articles of association of the company. The next question to consider is whether its articles of association limit the exercise, by the directors, of the company's borrowing powers. Having satisfied himself with regard to this, the banker should ask for a certificate from the chairman or one of the directors or the secretary of the company to the effect that the proposed advances are in fact within the actual unexhausted powers to the directors of the company. If the borrowing is conducted by delegation of powers, the banker should satisfy himself that the same is strictly in accordance with the articles and any documents which may be signed on behalf of the company, in connection with borrowing should state specifically that they are signed on behalf of the company pursuant to the resolution to be referred to by its date, comprised in the mandate. It is, however, considered advisable that except in special cases the Board should be required to pass a resolution on each occasion the company wishes to borrow. Such powers may, or may not, include powers to pledge the company's property. Except in the case of non-trading companies, both under the English and the Indian law, companies have implied powers to borrow and mortgage property to such an extent as may be reasonable and necessary, for the carrying out of the objects stated in the object clause. It is not always necessary for a banker to make enquiries as to the purpose for which the funds to be borrowed are required and the advance made cannot be avoided on the ground of the funds being misapplied, as long as the banker acts *bona fide* and without knowledge of the misapplication.

Cessation of the powers of directors. In the case of the winding-up of a company, all the powers of its directors cease from the commencement of the winding-up, except to the extent to which either the company in a general meeting, or the liquidators, may sanction the continuance of their powers. Thus, the banker will not be justified in honouring cheques, drawn by the directors, after he has received notice of the passing of the resolution authorizing the winding-up of the company.

NON-TRADING ASSOCIATIONS—*Their liability, limited by guarantee.* Bankers sometimes receive requests for accounts to be opened in the names of associations, societies or institutions registered under the Indian Companies Act, the liability of whose members is limited by guarantee. This method of registration is used by associations which are formed with a view to promote art, science, commerce, religion, etc., or any other useful object, provided any profits made by such bodies are not distributed by way of dividend to their members. They do not use the term "Limited" after their names, nor does the word "company" except rarely, form part of their names. As in the case of other public companies, associations so registered should be required to observe the formalities referred to above, except that they are not required to obtain a certificate to commence business which is necessary in the case of public companies with a share capital. When such a body, *i.e.*, an association not for profit, requires an advance, the banker should investigate the question of its powers and any limitation that may have been imposed on the exercise of such powers. As in the case of public companies, securities, such as charges and mortgages, that are required to be registered, should be registered with the Registrar of Joint Stock Companies of the province in which the association is registered.

PRIVATE COMPANIES—*Their growth.* In England, there is an increasing tendency for individuals as well as trading firms to convert their business into private limited companies. This is evidenced by the fact that a very large

majority of the companies registered in recent years at Somerset House in London, are private companies. In 1933, no less than 11,063 such companies were registered as against 873 public companies. Out of the total number of companies registered in England more than ninety per cent. are private companies, most of them being of small size. A large number of these companies are "one-man" concerns, *i.e.* one man owns nearly all shares and has the sole control. In India, the advantages of trading as private companies are just beginning to be realized and, therefore, the number of such companies is on the increase, though it still bears no comparison with their number in England. A banker dealing with a private company has to be on his guard and, therefore, he may not be willing to grant it occasional and seasonal accommodation without security which he may be inclined to do in the case of an individual borrower, whether trader or firm.

Accommodation to private limited companies. A banker is well advised to exercise caution before acceding to a request for accommodation from a private limited company which has been a recent conversion of a trader's business. In strict legal analysis, whenever a sole trader converts his business into a private limited company, there is a sale of his assets to the limited company, which is a legal entity distinct and separate from him. The creditors of the trader cannot proceed against the assets so transferred to the company. In certain cases, however, if the trader is heavily indebted before he forms the company, the transfer may be held to be a fraudulent one made with the intent to defeat or delay his creditors. Such a transfer is in itself an act of insolvency and the trader, by reason of it, is liable to be adjudicated an insolvent on the petition of any of his creditors. On his adjudication, the Official Assignee's title will commence not from the date of the order of adjudication, but will "relate back" to the act of bankruptcy, namely, the fraudulent transfer to the company. In such a case, the result will be that all intermediate dealings with the property of the company will not be binding on the Official Assignee. In *re Simms* (1930), 2 Ch. 22, in similar circumstances, the title of the trustee in bankruptcy by operation of the doctrine of "relation back" was held to prevail over that of Lloyd's Bank who were holders of debentures created to secure a large overdraft granted to the company by the bank. The danger in dealing with such companies has been called by a writer as "Underwood danger" as illustrated by the *Underwood case* (Bankers', Insurance Managers' and Agent's Magazine, February, 1940, pp. 245-246).

Registration of charges. As in the case of certain other matters, companies are treated differently from individuals and firms in regard to the requirements regarding the registration of certain types of securities to be charged by them. Section 109 of the Indian Companies Act, 1913 (VII of 1913), as amended by the Amendment Act of 1936 (XXII of 1936), gives a list of charges that require registration. These charges as for example a floating charge, a charge on land, a charge made for securing an issue of debentures, etc., are of special interest to bankers.

Consequences of failure to register. The charges are required to be registered within twenty-one days after the date on which they are actually signed or sealed, which may or may not be the same as the date of execution. Failure to register the charge will make the security void against a liquidator or any creditor of the company. Moreover, a duly registered subsequent charge will get priority over the prior charge which has not been so registered, even if the person in whose favour the subsequent charge is created, has express notice of the prior unregistered charge (*In re Monolithic Building Company* (1915). 1

Ch. 643). It is no doubt the duty of the company to have these charges registered, but in practice bankers lending moneys against such securities, usually register the charges either directly or through their solicitors. A registered charge may be cancelled by sending memorandum of satisfaction to the registrar.

PARTNERSHIPS—*Introductory.* Although the number of banking firms is on the decline, it must be stated that there is still quite a large number of such firms in India. According to section 4 of the Indian Partnership Act, 1932 (IX of 1932) "a partnership is the relation between persons who have agreed to share the profits of the business, carried on by all or any of them acting for all."

Formalities. Excepting the limitation regarding the number of members in a partnership to ten for banking business, and to twenty in other cases, no formalities, such as registration, were required to be complied with until the provisions contained in section 58 of the Indian Partnership Act, 1932 (IX of 1932) were enforced. It requires that every firm should be registered with the Registrar of Firms of the area, in which it has its head office. This Act has strengthened the position of persons, who may have occasion to deal with such firms, as the former can now know, without difficulty, the names of the partners of a firm with which they are asked to enter into business relations.

Legal position of partnership. A partnership is sometimes regarded as an entity separate from its members. It is so under the Scottish law, but not either under the English or the Indian law. The firm's name is regarded as an abbreviation of the names of its partners.

Opening of partnership's accounts. A banker should not open an account in the name of a partnership, unless one or more of the partners apply to him to do so. Except where the partner making an application for the opening of an account in the firm name, is deprived of that power, and the fact is known to the banker, there can be no legal objection to a banker opening an account in the name of the firm at the request of any one or more of the partners. Failure, however, to make proper enquiries before opening an account on behalf of a firm in a partner's name may land a banker in trouble. While by section 22 of the Indian Partnership Act a partner must express or imply an intention to bind a firm in order to make other partners liable, section 19 (2) (*b*) expressly denies a partner any implied authority to open a bank account on behalf of the firm in his own name except where the usage or the custom of the trade permits it. The mere existence of a trade partnership is no warranty that a partner has authority to bind the firm by opening a bank account on its behalf in his own name (*Alliance Bank* v. *Kearsley* (1871), L.R. 6 C.P. 433). It is desirable, therefore, that a banker should always open a firm account in the firm's name and it is in his interest to endeavour to get a letter signed by all the partners, stating the nature of their firm' business, the names and addresses of all the partners and of those authorized to operate on the account in the name of the firm ; (see Appendix A, form No. 10, *post*). The authority given should include powers to draw, indorse and accept bills and mortgage and sell property belonging to the firm ; (Appendix A, form No. 10 (*a*), *post*). If this is done, a dormant partner cannot evade his liability and the banker is not put to the trouble of proving the interest of all the partners in the firm.

Operation of Firms' Accounts. As the drawing of cheques is necessary in almost all kinds of business, the bank is justified in honouring cheques, drawn in the firm's name and signed by a partner, unless it has received special instructions to the contrary, or knows that the partner, who has drawn the cheque in the firm's name is not authorized to do so. In this case, a notice from one or

more of the partners to the bank, cancelling the authority of any one of the other partners, would be sufficient notice to act upon. Similarly, one partner has an implied authority to stop the payment of a cheque drawn on the partnership account by another and the banker is bound to comply with the instructions issued by that partner.

Powers regarding immoveable property. It appears, that, according to English law, a partner, in the absence of special authority from other partners to execute a legal mortgage of the partnership property, can only give an equitable charge. This position is probably due to the technical rule of the English law, that an agent cannot execute a deed on behalf of his principal unless so authorized by deed. In British India, section 19, sub-section (2), clause (g) of the Indian Partnership Act, 1932 expressly states that the implied authority of a partner does not extend to transfer of immoveable property belonging to the firm. Section 8 of the Transfer of Property Act, 1882 states that a transfer of property passes to the transferee all the interest which the transferor is capable of passing in the property and in the legal incidents thereof. The result of the combined operation of these two provisions, is, it is submitted, that, unless all the partners who have an interest in the property, join in conveying their respective interests, there is no effective conveyance. Thus the position in India becomes similar to that obtaining in England.

Power to mortgage. Where a partner is managing the firm's business, he has the power of borrowing as incidental to the powers of trading, and consequently, he can pledge its moveable property. As a partner, thus, has no implied power to bind his co-partner by deed, the banker has, in order to obtain a valid legal mortgage, to see that either all the partners are parties to the mortgage, or that the partner executing the mortgage is vested with the power to do so on behalf of his partners. Where, however, a partner gave a legal mortgage without authority, it was held, that, while he had no power to bind the firm by deed, it could be regarded as an equitable assignment under hand (*Marchant* v. *Morton Down & Co.* (1901), 2 K.B 829).

Transactions on the private accounts. Owing to the fiduciary nature of the relationship between partners, a banker should not accept for the credit of the private account of a partner, cheques payable to his firm without inquiring from the other partners. If he fails to do so, the banker may lose statutory protection under section 131 of the Negotiable Instruments Act, 1881 (XXVI of 1881). However, it is not quite necessary to make any inquiry, if a partner draws a cheque on his firm's account and sends it for the credit of his personal account (*Backhouse* v. *Charlton* (1878), 8 Ch. D. 444). Caution is necessary in the case of a cheque sent in response to pressure for reduction or repayment of an overdraft on private account. The banker should also be careful, when he is asked to collect a cheque drawn in a firm's name and the customer's explanation is that he is trading under that name (*Guardians of St. John Hampstead* v. *Barclays Bank Ltd.* (1923), 39 T.L.R. 229). Under the English law, failure to register a trading name makes the offender liable to prosecution.

Retirement of a partner. In the case of the retirement of one or more partners interested in the account, the liability of such partner or partners to the bank ceases so far as future transactions are concerned, but in case of no notice having been given to the bank of such retirement, the retiring member will continue to be liable, even for advances made after his retirement. As a rule, however, on the retirement of the old partner and the admission of a new one, the banker releases the retiring partner and accepts the newly constituted

firm, as his debtors, in place of the old firm. In case, the banker does not want to relinquish his claim against the retiring partner, he will close the old account, and open a new one in order to avoid the application of the rule in *Clayton's case* (1816), 1 Merivale 572, according to which a payment shall discharge the earliest debt, whether of the customer or of the banker remaining unpaid.

Death of a partner. The death of a partner has the legal effect of dissolving the firm. His personal representatives have no right to step into his shoes; they cannot take part in its management; they can only claim the deceased partner's share in the assets of the firm. The banker can have no objection in continuing the account; he can presume that the surviving partners will account to the representatives of the deceased for his share in the assets. Where the firm has a debit balance the account should be stopped to fix the liability of the estate of the deceased and to avoid the operation of the rule in Clayton's case.

Insolvency of partner. It must be noted that in the absence of an express provision in the partnership agreement, insolvency of any partner will result in the dissolution of the firm by the operation of law In the case of insolvency of one of the partners, his authority to act on behalf of the firm ceases and his estate will incur no liability for debts contracted thereafter by other partners. A cheque signed by such a partner presented after he has been adjudicated an insolvent should not be honoured except upon confirmation by other partners. They may continue to operate on the firm's account for the purpose of winding up its business. Any credit balance of the firm can be paid to the solvent partners as it is their business to account for the insolvent's share in the firm's assets to the trustees for the bankrupt.

Partnership account and partners' private accounts. There appears to be no objection to a banker complying with the request to transfer money from the private account of a partner to that of the firm of which he is a member. It is not permitted to set off the balance of a person's private account against the account of the firm of which he is a partner.

JOINT ACCOUNTS—*Their nature and operation.* A banker should not open a joint account, except upon the receipt of an application, from all the persons interested in the account. It is very necessary that the banker should know how the joint account is to be conducted, not only as far as withdrawals are concerned, but also as regards other matters such as bill transactions, advances, securities, etc. Authority to draw on a joint account does not extend to withdrawals of safe custody deposits, or to overdrafts. Consequently, when opening a joint account in the names of several persons, the banker should obtain specific directions as to whether one or more of them shall operate upon the account: in the absence of such directions, the banker can honour only such cheques as are signed by all those in whose names the joint acccount has been opened. Some banks make their joint customers sign a comprehensive authority, covering all possible transactions, whereas others take a mandate regarding credit accounts only and require their customers to enter into a separate agreement, if an advance is contemplated; see Appendix A, form No. 12, *post.* In either case, bankers should usually see that provision is made regarding the following matters and contingencies.

Drawing of Cheques. Clear instructions as to the drawing of cheques on the joint account are necessary. Such instructions should clearly show as to whether both, or either, or all, or some of the persons in whose names the joint account is to be opened, may draw on the account. The general mode of the

law regarding joint debts, by which a debtor can pay to one of several joint creditors, is not applicable to debts due from a banker to his customer. The authority given to one or more persons to draw on a joint account is automatically revoked by the death, bankruptcy or insanity of the person giving the authority. Similarly, the party giving the authority has the right to revoke the authority.

Survivorship. It is usual that the mandate should also deal with the question of survivorship. Although instructions are not absolutely necessary, it would be a desirable precaution to ascertain beforehand what is to happen in the event of the death of one of the joint customers. Speaking generally, on the death of a joint holder, the survivor is entitled to the whole amount both under the law of devolution applicable to joint owners and by the custom of bankers.

Power to overdraw. The instructions should make clear whether the persons authorized to draw the cheques, will also have the power to overdraw the account. If authority to incur debts on the joint account is given, it is very important that several liability also should be established. In case of a joint liability only, the creditor can bring only one action, whereas in the case of several liability, he has as many rights of action as there are debtors. If, therefore, one of the two joint debtors dies, the creditor can only look to the survivor for his debts and not to the legal representative of the deceased debtor. In cases of joint and several liability, the banker can claim, against the estate of the deceased joint debtor, to the extent of the debt due at the time of his death.

Other matters. Mandate should also make clear, whether withdrawal of securities, etc., left for safe custody on joint account is also included in the authority given. Similarly, it should be made clear, whether power to pledge securities belonging to a joint account is, or is not, included in the powers given. The full title of the account should appear in the bank's books as well as on every cheque drawn.

Husband and wife. A common instance of the joint account is that of a husband and wife. According to the decision in *Marshall* v. *Crutwell* (1875), C. 20 Eq. 328, it appears that, whereas an account is opened by a husband for his convenience, the balance cannot be claimed by his widow, but has to be brought into the deceased's estate. On the other hand, if it is clear that the husband, by opening a joint account, intended to make a provision for his wife in case of his untimely death, the widow would receive the money (*Foley* v *Foley* (1911), 1 I. R. 281).

Insolvency of the Joint Account Holder. The insolvency of a joint account holder puts an end to the mandate and operations on the account will cease. Payments from the account should be made on the joint direction of the trustee of the insolvent account holder and the solvent party. While returning the cheque of the solvent account holder, a suitable answer should be given so as to see that no aspersion is cast on his credit. Insanity of a joint account holder countermands any authority given as regards operations in the account, which should be stopped till the banker receives joint instructions from the same customer and the Committee of the Lunatic if one is appointed.

Joint Hindu families. **A banker dealing with joint Hindu families will find to his cost, that certain laws and customs relating to succession and transfer of rights, put serious obstacles in the way of his providing financial**

accommodation on the security of what is ordinarily considered to be a normal and reliable bank security. For example, in a joint Hindu family, governed by the Mitakshara law, all the members acquire a right in the ancestral property by birth and the accrual of that right dates from conception, so that there is always the danger of having a transaction impugned by even a person who at the date of the transaction was not born. In order to charge a joint family estate, it is necessary that all the members of the family should join in the execution of the deed, or should give their consent, or that the deed should be made by the head of the family in his capacity as *karta* or manager. The powers of the *karta* are, however, limited and a charge created by him is binding on the family property, only if the loan is taken for a purpose necessary or beneficial to the family, or is in discharge of a lawful antecedent debt due from the family. In the event of a suit being filed by a banker, who has granted loan on the security of the joint family estate, the burden of proof that, before he made the loan, he had satisfied himself that the loan was taken for purposes beneficial to the family, lies on the banker. To avoid this and several other difficulties, some banks require a Hindu customer desiring to open an account, to furnish a statement to the effect that the money deposited in a fixed deposit, current or savings bank account, is the personal or self-acquired property of himself or herself and not that of a joint Hindu family. (See Appendix A, forms Nos. 6 (*b*) and 11, *post*.)

Customer's Attorney, Mandate distinguished from Power of Attorney. Bankers have sometimes to deal with the attorneys of their customers. An ordinary mandate by which a customer gives instructions to his banker that customer's nominee is to operate upon his account. Whereas mandate confers authority to operate on or in connection with the customer's banking account under a power, the right may apply to any legal transaction for which the donor of the power wishes to provide for. By mandate the particular banker is informed that certain powers have been delegated, whereas a power of attorney acts as a general notice and authority.

Special or General Power of Attorney. Such a power may be special or general; (Appendix A, forms Nos. 9, 38 and 39). Where the person to whom the power is granted to act for is his principal in only certain specified matters the power is known as special power as distinguished from a general power by which the attorney is authorized to bind the grantor of the power generally. The former form is used, for instance, when a certain document—a sale deed—is to be registered; whereas the latter is used whereby a businessman authorizes his manager to act for him in managing the business, etc., either when he himself goes abroad or is otherwise very busy. Although many powers of attorney contain a general clause whereby the donor undertakes to ratify anything which the donee may do on the donor's behalf, in practice it will be found to cover only such acts as might be deducible from the instrument.

Precuations to be taken. The bank manager should satisfy himself that the power of attorney is duly stamped and is in force; he should also retain a copy of the same. It is advisable to ask the customer to sign the usual mandate form so as to provide against any loophole that may be found in the power of attorney. If this is done the power of attorney as far as the bank is concerned can be treated as having been suspended by the mandate.

EXECUTORS AND TRUSTEES—As a rule, a banker will avoid opening accounts of executors and trustees, but can have no objection to do so, if the accounts are to be in their personal capacities. Otherwise, he will thoroughly

acquaint himself with the document appointing the executors or trustees and will have no dealings with the estate, until the official probate or letter has been inspected by him. In practice, however, a banker, sometimes grants facilities to persons whom he knows to be representatives of the deceased, pending the issue of the official documents. In case a banker comes to know that the funds deposited belong to a trust fund and they are being misapplied, he cannot escape liability on the ground that the bank account was in the name of a trustee. A banker who disregards the requirements of law may be held liable to the beneficiaries of a trust for fraud committed by a trustee if the banker had been put on inquiry or if he failed to take proper and adequate steps for the protection of their interests. In the leading House of Lords case of *Gray* v. *Johnstone* L.R. 3 H.L. 1, it was held that in order to render a banker liable there must be a misapplication of the money intended by the trustee, so as to constitute a breach of trust and the banker must be cognizant of that intention. The existence of a personal benefit to the banker, designed or stipulated for as a consequence of such misapplication, would be strong evidence that the banker was privy to the breach of trust. In a recent Privy Council case *O. R. M.* v. *Nagappa Chettiar*, 43 Bom. L.R. 440, the banker who had knowledge of the trust character of an account and who allowed the customer to transfer the funds standing to the credit of the trust account to his personal account which was overdrawn, was held liable to refund the moneys to the charity to which they rightly belonged. In an earlier Privy Council case A.I.R. [1936] P.C. 193, the plaintiff, a lady, had an account with the defendant bank. The plantiff gave to *A*, a solicitor, very wide powers to manage her affairs, including a power to operate on her account. *A* who was largely indebted to the defendant bank withdrew therefrom plaintiff's money and paid off his own overdraft with the defendant bank. It was held that *A* was a constructive trustee in respect of the plaintiff's money and the bank, who for its benefit, connived in the breach of trust without any inquiry, became, in its turn, constructive trustee subject to the same fiduciary obligation by which *A* was bound. When the account is opened for two or more trustees, the banker should have clear instructions as to who shall sign cheques or other instruments, but in the absence of such instructions, one executor can deal with the funds of the estate on behalf of the others, whereas in the case of the trustees, all must sign on every occasion, because, the appointment of several trustees is taken to mean that the property shall be under their combined control. On the death or resignation of one of the executors, there is no need for the banker to modify the course of business. However, in the case of death or retirement of one of the trustees, it is not safe for the banker to assume that the surviving or the continuing trustees possess full powers to deal with the property. In case the executors borrow money, as usually they do, to discharge urgent debts or obligations of the deceased, they are personally liable for the advances so obtained, unless they are secured by the specific assets of the deceased. An executor has no power to borrow money so as to bind the general estate. In the case of a married woman being appointed as executrix, she will not bind her husband for her acts, unless the latter meddles in her duties in the capacity of executrix.

Clubs, schools, etc.—Accounts are often opened, in the names of non-trading institutions such as clubs, schools, committees, funds, associations, etc., see Appendix A, form No. 14, *post*. It should be remembered that such bodies, if not incorporated, have no contracting powers as they have no legal personality. They can neither be sued nor are the individual members of such institution liable for any overdraft, as long as the members signing the cheques do so in their representative capacity and not in their individual capacity.

However, if the account is opened in the following form " R. A. Dubash, account Parsi Gymkhana," then Mr. Dubash can be held personally liable for the overdraft created by the drawing of cheques on this account. The banker, having satisfied himself that the club committee, etc., wishing to open an account is a properly incorporated body, should ask for a duly authenticated copy of the resolution of the managing committee authorizing the opening of the account giving the necessary powers to a certain person or persons to operate upon the same ; see Appendix A, form No. 13, *post*. If the person authorized to operate upon the account of the club or association happens to have his personal account with the same bank, it must see that no club money should find its way into the personal account of the office bearer of the club.

LOCAL AUTHORITIES—The constitution, powers and restrictions of the different kinds of local authorities, provide sufficient material to make a small volume and it is not possible, therefore, to deal with the subject here at any length. As these bodies usually dispose of large funds, bankers regard them as desirable customers, although their accounts require special precautions. When a banker is asked to open an account in the name of such a body, he should satisfy himself as to the authorized method of dealing with its funds, the persons by whom cheques are to be drawn and all other relative questions. The answers to these questions will generally be found in the special Acts constituting such bodies and it is therefore necessary to refer to the relative Act when a request to open an account from such a body is received. It must, however, be remembered that in allowing overdrafts to such bodies, a banker runs a great risk, as their borrowing powers are circumscribed and obscure.

BANKRUPTS—When a customer gives notice to his creditors that he has suspended or is about to suspend payment of his debts, or when he has filed in the court a declaration to the effect that he is unable to pay his debts, a banker should stop all business transactions with him. The whole of the debtor's property will be vested in the Official Receiver, or in Presidency towns, the Official Assignee who will administer it for the benefit of the creditors generally, the object being to protect the property from the debtor and also from any individual creditors who may seek to obtain preferential treatment. Special care should be taken in the case of undischarged bankrupts, who are subject to a number of disqualifications. For instance, an undischarged bankrupt cannot obtain credit for more than Rs. 50. He will be regarded as guilty of misdemeanour if he engages in a trade or business under another name without disclosing the fact of his bankruptcy.

LIQUIDATORS—Bankers should also be careful while dealing with persons appointed to wind up the affairs of a company. A liquidator's business is to realize the company's assets and to collect any amounts owing by the shareholders. He has to apply the funds thus collected in payment of the company's debts and distribute the balance, if any, among its shareholders. He has the powers to borrow money against the security of the company's assets and to draw, accept, make and indorse bills and notes, in the name and on behalf of the company. In the exercise of any such powers, he is free from any personal liability.

MERCANTILE AGENTS—An agent without any power of attorney, who represents that he has authority to act on behalf of his principal, is personally liable for breach of warranty of authority for any loss sustained by a third party who relies upon the representation, even if the agent, in making the representation, acted in good faith and was under the impression that he had

such an authority. A banker who has been authorized to allow an agent to operate a customer's account, should at once suspend all operations on that account,—upon hearing or being notified of the principal's death, insanity or bankruptcy. While signing on behalf of his principal, an agent must indicate that he signs per procuration or on behalf of the principal, unless he has been authorized to sign the principal's name; otherwise, he will not be exempt from liability, merely by adding to his signature words describing himself as an agent. A banker has to be on his guard while dealing with agents with limited authority. He should on no account allow an agent, or in fact any person, to pay into his own private account, cheques which he has indorsed per-pro. or on behalf of another, without satisfying himself that the agent has the authority of the principal to do so. A banker should not allow an agent to overdraw his principal's account except with his express authority. A factor is an agent who is entrusted with the possession of the goods which he is asked to sell for his principal. He carries on business in his own name and not necessarily in that of his principal; while dealing with a factor, the banker will run no risk if the transactions are in good faith. and the advances are secured by goods or documents of title deposited by him.

MOHAMMEDAN CUSTOMERS—As a Mohammedan can informally bind property by verbal *wakfs* or trusts, the banker is confronted with certain doubts and difficulties while advancing money against an estate owned by a Mohammedan; (Appendix A, form No. 33 (*d*), *post*). The defence, in certain cases, in a mortgage suit against a Mohammedan, will be that the property mortgaged is, in fact, the subject of religious endowment. Besides, a Mohammedan cannot bequeath more than one-third of his property by will, and, in case he dies intestate, the heirs to his estate will have to be traced up to the third generation in the ascending and descending lines. In dealing with the money or property of a deceased Mohammedan customer, the only obvious precaution for the banker is to insist that the party claiming the money or property should produce a certificate of probate or letters of administration from a competent court in British India.

CHAPTER V

CHEQUES

THE ORIGIN OF THE CHEQUE—In an earlier chapter we have seen that the London Goldsmiths were the first bankers in England. They received money from their customers on condition to pay its equivalent when called upon to do so. When a customer wished to make payment to a third party, it was customary to write an order to his banker to pay the sum required. According to some research scholars, these notes or orders were the earliest forms of cheque currency. The cheque or "drawn note", as it was called and which was used by the customers of the goldsmith banker, was simply an ordinary slip of paper containing a written order, addressed to the banker by his customer, to pay on demand, the sum specified therein. Generally it was made payable to the payee only and sometimes to the payee, or order, or bearer. Under the *Lex Mercatoria*, from the very outset, the "drawn note" appears to have been regarded as a bill of exchange, which, if made out to order, could be indorsed in favour of a third party. We give below three specimens of the drawn notes used by the goldsmiths (Macleod's Theory and Practice of Banking, Vol. I, Chapter IV, sec. 4, p. 282).

(1)

Mr. Thomas Ffewles,- I desire you to pay unto Mr. Samuell Howard or order upon receipt hereof the sum of nine pounds thirteen shillings and six pence and place it to the account of

14th August, 1675. Your servant
£9 13s. 6d. Edmund Warcupp.

(2)

Mr. Childe,—Pray pay unto the bearer the sum of twenty pounds and place it to the account of

London, August 29, 1689. E. Pollexen.

(3)

Bolton, 4th March, 1684.

At sight hereof pay unto Charles Duncombe, Esq., or order, the sum of four hundred pounds, and place it to the account of

Your assured friend,
WINCHESTER.

To
Captain Francis Child,
Near Temple Barce.

Later research, however, has proved that the origin of the cheque dates back to earlier times (The Origin of the cheque by R. D. Richards —The Banker, January, 1929, p. 29). It was customary, during the Stuart period in England, to pay persons who had claims upon the Exchequer, such as state officials, Crown servants and pensioners, by means of what were termed "debentures." Except during the Cromwellian period, the debentures were generally drawn in Latin usually with several of the words abbreviated and when cashed at the Exchequer they were kept as vouchers in proof of payment of money thereon. These Treasury-Exchequer money orders were cashed at the Exchequer when there were sufficient funds for their payment and so the goldsmith bankers readily discounted these orders. The debentures were verbose documents, authorizing payment to be made to the payee or his assignees at the Exchequer, usually out of certain funds specified in the order. From this it can be safely concluded that the "drawn note" of the goldsmiths was not a novel instrument, but a copy of a similar device, used in connection with the issue of public money from the Exchequer.

ADVANTAGES OF CHEQUE CURRENCY—The advantages of cheque currency over the forms of currency are manifold. Firstly, it is very convenient to make and receive payments by means of cheques. Not only can a cheque be drawn for the required amount—small or large—but also the making and receiving of payments by specially crossed cheques are free from those risks, which are attendant upon money payments. Secondly, a payment by cheque practically does away with the need of insisting upon a receipt from the payee, although receipts should as far as possible be obtained. Persons making payments by cheques, are saved from the trouble of maintaining and preserving the record of the payments, for the paying bank keeps a record thereof, and, if necessary, can prove them by the production of the cheque bearing the payee's indorsement, entries in its books and by the evidence of its clerks. Lastly, were it not for the cheque facilities, it would not only be difficult, but also more costly to make such payments. It is only in comparatively recent years, that besides Great Britain, other European countries, such as France and Germany, have realized the several benefits arising from the use of this form of currency and consequently they are doing all they can to encourage its use.

THE POPULARITY OF CHEQUES—The use of cheques has become increasingly popular in England during the last ninety years or so. After the passing of Peel's Act, 1884, joint stock banks, which had the right to issue notes, finding that they could not increase their note issues beyond the maximum amounts laid down under the Act and others which had no such right, had to encourage the use of cheque currency for the expansion of their business. So general has the use of cheques become, that out of every £ 1,000,000 paid into a London bank in 1922, only £ 8,900 consisted of notes and coins. In 1918 when the stamp duty on cheques was raised from a penny to two pence, many persons believed that it would lead to a decrease in the use of cheques. But the late Lord (then Mr. Philip) Snowden, when Chancellor of the Exchequer, stated that, whereas in the year before the raising of the duty the number of cheques used was 298,000,000, it had risen to 366,000,000 in 1923-24 [The Times (London), 6th May, 1923]. The important part which the cheque currency plays as a means of exchange in modern times, cannot be disputed. The amount of cheques that passed through the bankers' clearing houses in England in 1934 was £ 35,484 million as against only about Rs. 17,24,10 lakhs equivalent to £ 1,293 millions in India. These figures work out approximately at Rs. 12,430 per head in England as against Rs. 48 in India.

CAUSES OF LACK OF POPULARITY OF CHEQUES IN INDIA—From the figures given above, it is clear that the use of cheques in India is comparatively small; firstly, because as stated in Chapter II, the number of banking offices, particularly having regard to the size of the country, is absolutely small; secondly, many banks, in the past and some even to this day, require cheques to be drawn in English a language known to only a small fraction of the population —according to the Census Report for 1931 the proportion of literates in English is, males 18.1, and females 2.3 per 1000 of population—thirdly, the people have not yet acquired the requisite measure of confidence in the safety of banks; fourthly, the stamp duty on cheques acted as an obstacle in the free use of cheques upto 1927; fifthly, the advantages of this form of currency are not yet fully realized; and lastly, the facilities for the encashment of cheques are far from satisfactory. Until lately, it generally took half an hour to cash a cheque in most of the big banks in India, particularly in cities like Bombay and Calcutta, whereas, banks in England and the other western countries, except in very rare cases, do not take more than a couple of minutes in making payments of cheques presented at their counters. The prompt payment of cheques in

England and other countries of the west is partly due to the fact that cashiers employed by the banks in those countries are fairly responsible members of their staff and not employees of firms of shroffs, to whom the cash work of a bank is generally entrusted on a contract basis in India.

INADEQUATE NUMBER OF OFFICES—As regards the first of the causes stated above, there is only one banking office for every 130,300 persons in India, as compared with one for every 3,738 persons in the United Kingdom, therefore, it is no wonder that the use of cheques in India is very small. In order to develop the banking habit among the people in this country, it is essential that the number of banking offices must be increased considerably.

THE LANGUAGE DIFFICULTY—With regard to the second reason, it may be mentioned that, even among literate Indians, only a few can correctly draw a cheque in the English language, in which the cheque books of most of the banks are printed. Some banks offer to honour cheques signed in languages other than English, if their customers agree to indemnify the banks against any loss arising from failure to detect forgeries of customers' signature, (Appendix A, Form No. 6 (*c*), *post*). There are others, it is gratifying to state, who have begun to allow their customers to draw cheques in certain vernaculars without asking for indemnity. After all, particularly when the Indian element is being gradually introduced in its higher grades, it should be as easy for the staff of a bank to detect forgeries or to verify signatures in the vernaculars, as in English. It appears desirable that banks should be required to honour cheques drawn in any one of the recognized vernaculars of the presidency in which the drawee bank is situated. It will not only encourage the use of the cheque currency, but also provide an opening, however small it may be, for a section of the young men belonging to the middle class of the country, in the joint stock banks.

ABOLITION OF THE STAMP DUTY—Thanks to the abolition of the stamp-duty in 1927, which was strongly recommended in the first edition of this book, the use of cheques, not only in the presidency towns and other big commercial centres, but also in the small cities, appears to have considerably increased. The extent of this increase is not known, as the number of cheques cleared through the bankers' clearing houses in India came to be published only recently. The total amount of cheques cleared through the clearing houses increased from Rs. 15,87,67 lakhs in 1926 to Rs. 22,52,03 lakhs in 1940. The number of cheques cleared through the clearing houses in India including Burma increased from 1,57,46,836 in 1939 to 1,69,35,199 in 1940. In any case the loss of revenue to Government as a result of the abolition of the stamp duty is insignificant, as compared to the many benefits, which have accrued from the large expansion in the use of the cheque currency and the growth of the banking habit.

OTHER REASONS—As regards the reasons other than those given above, it may suffice to state that a great deal depends upon the banks, which can, by offering greater facilities for the encashment of cheques, increase considerably their use, both to their own advantage as well as to that of the country. Normally, the demand for currency in winter for the movement of crops, not only causes stringency in the money-market which affects adversely both industrial and commercial interests, but also the cost of transferring money over long distances has to be borne by the people. The cheque habit is sure to bring ~~about the~~ desired ease in the money-market and reduce the charges for transfer of funds. . .

Suggestions for Popularising the Cheque Currency.

Having regard to the numerous advantages and the indispensability of cheques to the industrial and commercial advancement of India, it is suggested that propaganda work for encouraging the cheque habit, should be carried on by Government and banks. The expenditure incurred in this connection will pay perhaps tenfold in the long run. The following are some of the ways in which Government and banks can help in popularizing the use of cheque currency:—

PROPAGANDA—Post offices in large cities may be required to stamp all letters with words such as "For mutual benefit, use cheques for payments." Traders and merchants, in their own interest, can help in propagating the benefits of cheque currency. The author knows of an instance, in which a bill collector of a certain company in Bombay decamped after collecting some bills, because the payments by most of its customers were not made by crossed cheques. This made the company circulate printed cards to its patrons with the following words:– "Safety-first, for mutual safety, please make payments by cheques." It would be still better to use cheques crossed with the words "Payee's A/c."

Government should accept freely cheques in payment of land revenue and in satisfaction of its other money claims against the people. At present cheques are received at the treasuries managed by the branches of the Imperial Bank of India, as well as the offices of the Reserve Bank of India. As neither of these banks have yet opened branches at all the district headquarters and as cheques are not generally accepted at the sub-treasuries, the use of cheques in payment of land revenue is by no means general. There appears to be no valid reason against the extension of this facility to sub-treasuries also, particularly when it is understood that *pucca* receipts need not be issued until such time as the cheques received in payment are duly honoured. Government can contribute materially to the development of the cheque habit by making all payments for amounts over Rs. 100 or 200 by cheques. In France, a decree was passed in March, 1940, by which all amounts beyond a fixed minimum owed by Government departments are required to be paid by cheques. The Petain Government has carried matters a good deal further by making it compulsory for all payments for goods, services, rent and similar obligations in excess of 3,000 Francs (roughly Rs. 240) to be made by cheques or bankers' drafts. Local authorities in India can also lend a helping hand in popularizing the use of cheque currency by using cheques for the payment of salaries to their employees receiving, say, Rs. 100 or more per month.

PROMPT ENCASHMENT OF CHEQUES—Banks should provide adequate facilities for the prompt encashment of cheques across the counter. In this connection, their attention is invited to the practice of the English banks, whose cash departments are manned by their own staff and not by the employees of the shroffs, who, as we have seen, are paid a lump sum per year for doing the cash work in some of the Indian banks.

PERMISSION TO DRAW CHEQUES AGAINST SAVINGS BANKS ACCOUNTS—Lastly, banks may, subject to certain restrictions, allow cheques to be drawn against the savings banks accounts. Some of the exchange and joint stock banks in India offer this facility to their customers and there appears ~~to be no~~ reason why other joint stock banks should not follow suit.

DEFINITION OF CHEQUE—Before examining the various questions affecting the drawing, collecting and payment of cheques, it is necessary to explain the legal definition of the term "cheque." According to section 6 of the Negotiable Instruments Act, 1881 (XXVI of 1881), "A cheque is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand." In order to understand this definition, it is necessary to know the definition of a bill of exchange.

DEFINITION OF A BILL OF EXCHANGE—The definition of a bill of exchange as given in section 5 of the Indian Negotiable Instruments Act, 1881 (XXVI of 1881), is as follows:—

> A "bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.
>
> A promise or order to pay is not "conditional" within the meaning of this section and section 4, by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.
>
> The sum payable may be "certain" within the meaning of this section and section 4, although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due.
>
> The person to whom it is clear that the direction is given or that payment is to be made may be a "certain person" within the meaning of this section and section 4, although he is misnamed or designated by description only.

For specimen forms of bills of exchange please see App. A, No. 25.

Requisites of a Cheque.

INSTRUMENT IN WRITING—A cheque must be *an instrument in writing.* Oral orders, although they may have the other requisites, cannot be treated as cheques. The law does not lay down any restriction as to the writing materials to be used for making out a cheque. As Mr. Sheldon says, the writing may be done by means of (*a*) pencil or pen, (*b*) a typewriter, or (*c*) printed characters. Although there is no legal flaw in the case of cheques written with an ordinary lead pencil, yet bankers should discourage this practice (Practice and Law of Banking, by H. P. Sheldon, 2nd Edition, p.2). It is true that during the first Great War 1914-1918 many cheques drawn in copying pencil by those in the fighting lines, were honoured by English bankers; but the exceptional circumstances of the war were very largely responsible for the bankers' action in the matter. All the same, it must be remembered, that honouring of cheques written in pencil entails many risks, as alterations unauthorized by the drawer are easy to make and difficult to detect. Consequently, bankers in their own interests should not make it a practice to honour cheques drawn in pencil.

UNCONDITIONAL ORDER—There was an old-world courtesy about the early cheque, as is even now the case with our *hundi*, which is conspicuous by its absence in the bald and part-printed documents of to-day. The modern instrument must contain *an unconditional order.* As regards the "order," it is not necessary that the word "order" or its equivalent must be used to make the document a cheque. Generally, the order to a bank is expressed by the word "pay." If the word "please" precedes "pay," the document wil

not be regarded as invalid merely on this account. On the other hand, an instrument in the following form is not considered to be an order:—"Mr. Black, please to let the bearer have seven pounds and place it to my account and you will oblige." It is necessary that the order must be *unconditional*—which term is explained to a certain extent by para. 2 of section 5 of the Indian Negotiable Instruments Act quoted above. If the banker is asked to do something else in addition to the payment of money, the order becomes conditional, therefore, the instrument cannot be regarded as a cheque. For instance, if the cheque has a receipt form attached to it and the following words are added, "provided the receipt form at the foot is duly signed and dated," or if the amount is made payable out of a particular fund, the order will be regarded as conditional and hence the instrument containing such a direction cannot be regarded as a cheque. If, however, the order indicates that a particular account, is to be debited with the amount, or makes a statement of the transaction which leads to the cheque being issued, the order will remain unconditional. Similarly, if the direction regarding the signing of the receipt is addressed to the payee, it will not invalidate the instrument merely on that ground, as the aforesaid direction is not part of the order given to the banker. For instance, if the instruction appears thus:—"This receipt must be signed before presentment for payment", it does not affect the unconditional character of the order. The late Sir John Paget doubted the correctness of this view. However, it has been held recently that signing of the receipt in such case does not amount to the indorsement of the cheque.

On a specified banker only. The instrument must be drawn on a specified banker. This means, firstly, that it should be drawn on a banker and not on any other person, and secondly, that the name and preferably also the address of the banker should be specified, so as to avoid any mistake regarding the person from whom the payment of the cheque is to be demanded. Thus it will be seen that orders on Government treasuries such as "supply bills," as distinguished from orders on the Reserve Bank of India or the Imperial Bank of India, cannot be legally regarded as cheques because they are not drawn on a banker—a term which cannot be used for the Government of India; consequently no statutory protection under sections 85, 128 and 131 of the Indian Negotiable Instruments Act, 1881 (XXVI of 1881) can be claimed for such instruments.

BANKERS' DRAFTS IN ENGLAND AND IN INDIA—It should also be noted that according to section 3 of the Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), a bill of exchange must be addressed by one person to another, *i.e.*, the drawer and the drawee must be two different persons, firms or institutions. Consequently, in England, when an order for payment was addressed by one branch of a bank to the head office or to another branch of the same bank, the order was not treated as a cheque, for the drawer and the drawee could not, in this case, be regarded as two distinct institutions. The passing of the Bills of Exchange Act (1882), Amendment Act, 1932, has brought such bank drafts into line with cheques: Sections 76 to 82 of the Bills of Exchange Act, 1882 (which relate to crossed cheques,) as amended by the Bills of Exchange (Crossed Cheques) Act, 1906, shall apply to a banker's draft as if the draft were a cheque. The expression "banker's draft" means a draft payable on demand by or on behalf of a bank upon itself, wheather payable at the head office or some other office of the bank. As the definition of a bill of exchange according to the Indian law does not require the order to be addressed by one person to another, the drafts drawn by the head office of a bank upon its branches, or *vice versa*,

could even before 1930, be treated as cheques, if they satisfied other requirements of the law. When the law in India was put on a more satisfactory basis by the enactment of section 85A of the Negotiable Instruments Act, 1881 by Act XXV of 1930 by which a bank paying such a draft in due course notwithstanding that the payee's indorsement is forged, has been given statutory protection. In *Slingsby and others* v. *Westminster Bank, Ltd.* (1931), 1 K.B. 173, his Lordship Finlay J., was of opinion that an officer of the Bank of England, signing the interest warrant for payment of interest on the war stock, was acting as an agent of the Government and was drawing on the Government funds deposited with the bank and the document was therefore a cheque. Here distinction is made between the dual capacity of an officer of a bank, acting in his capacity as agent of a third party, as distinct from a banker.

A certain sum of money only. The order must be only for the payment of *a certain sum of money only.* It is clear that orders asking the banker to deliver securities or certain other things, although their nature may easily be determinable, cannot be regarded as cheques. It must also be noted that the sum of money to be paid must be certain. An order is for a "certain sum" within the meaning of the definition given above, when a cheque is drawn in sterling or in any other foreign currency on a bank in India, if the rate of the particular foreign exchange is stated or even if the rate at which it is to be converted into Indian currency is left to be determined by the course of exchange. Similarly, if the amount referred to in the order, is payable with interest at a given rate upto the happening of a specified event, which, is certain to happen, although the time of its happening may not be certain, the amount payable is still a "certain" sum.

Payee to be certain. In order that an instrument shall be a valid cheque, it should be made payable to or to the order of, *a certain person or the bearer.* It should be noted that "persons" in law are not necessarily human beings. The legal "person" may be one of the "bodies corporate" constituted by law with power to contract in accordance with recognised legal principles. Joint stock companies, local authorities, building and friendly societies, clubs, trade unions, guilds, charity associations, and institutions of various kinds; all these constitute legal "persons." Moreover, to denote the payee with certainty does not necessarily mean that his name should be given in the instrument. He may be designated as the holder of an office. Thus, instruments payable to the principal of a college or a school, or to a treasurer or the secretary of a particular society, club, or union, are to be regarded as payable to a certain person, as the persons holding such offices constitute legal "persons." Even the misnaming or designating of a person by his office only does not vitiate the instrument.

Payable on demand. The order must not be expressed to be payable otherwise than *on demand.* It is not necessary to use the words "on demand" or their equivalent, as when the drawer of an instrument asks the drawee to pay and does not specify the time for its payment, the instrument is payable on demand according to section 19 of the Negotiable Instruments Act.

DRAWING OF CHEQUES—It has already been stated in Chapter II that the right to draw cheques on a banker depends upon the relationship between a banker and his customer, who has a current account with him. This right is limited, however, to cases where the amount of cheques to be drawn does not exceed the balance standing to the credit of the customer's account, or is within the amount of the overdraft agreed upon. It is not however, necessary, that

there must be an adequate balance at the credit of the customer's account at the time the cheque is drawn, but there must be reasonable prospects of the customer being able to deposit sufficient money before the cheque is presented, so as to enable the banker to honour it. Where no such reasonable prospect exists, the drawer of the cheque may be convicted of cheating, if it is proved that he persuaded the person to whom he gave the cheque to part with his goods or valuables in return therefor, which that person otherwise would not have done.

Use of Printed Cheque Forms.

ADVANTAGE OF PRINTED CHEQUES FORMS—The use of printed cheque forms, supplied by the banker upon whom the customer desires to draw, is advisable, firstly, because it renders forgery of cheques more difficult as the forger will have to obtain one of the forms supplied to the customer before he can forge the signature of the customer; secondly, because alteration of the amount of a cheque drawn on a printed form can more easily be detected than when it is drawn on an ordinary piece of paper; thirdly, because the banker, by referring to the cheque book records can easily know the name of the drawer, whose signature may not be quite legible; fourthly, it saves to the customer the trouble of drafting cheques in accordance with the requirements of law; fifthly, it is easier to send advice to the banker to stop the payment of a certain cheque by giving him its number; and lastly, the counter-foils in the cheque book can be used as a record of the various payments made by the customer by means of such cheques. With a printed form, not only can there be no mistake in the wording which will make the instrument inconsistent with the legal definition, but also there is the convenience of having a printed address and a ready stamped form, when it is liable to stamp duty.

SPECIAL PRINTED FORMS TO ADVERTISE CUSTOMER'S BUSINESS—Some customers, particularly trading customers, demand special forms with their names printed on them. This is done more with a view to give prominence to their names and business. The bankers generally comply with such requests of their customers, whose accounts justify the additional expense which in other cases can be passed on to the customers. If the size of the form is larger than the usual one it may give the banks some trouble in handling such cheques. If, however, the special form required by a customer embodies a receipt to be completed by the payee, before payment is made, it is necessary that the banker should obtain a letter of indemnity, providing that he shall have the same protection to which he is entitled under sections 85 and 128 of the Negotiable Instruments Act, 1881. (For a specimen special form, see Appendix A, Form No. 6 (*d*), *post*.)

HONOURING OF CHEQUES DRAWN ON ORDINARY PIECES OF PAPER—In England, most banks usually honour cheques even when they are not drawn on the forms supplied by them. In India, some bankers follow the practice of their English *confreres*, and others decline to accept such instruments. Dishonouring such instruments however, can only be justified under the terms of a special agreement between a banker and his customer, as it is not necessary under the law that only such forms as supplied by the bank must be used. In practice, however, all banks by their rules referred to in the application form which a customer is made to sign at the time of the opening of an account, make it obligatory on the customer's part to draw cheques only on the forms supplied to him and in such cases, the banker is justified in refusing to honour cheques

drawn otherwise. It still appears desirable, that if a customer happens to draw a cheque on a piece of paper or a form other than the one of those supplied by the banker, the latter should honour it, the form is in order and there is nothing to arouse his suspicion respecting the amount, though he may impress on his customers the advisability of drawing cheques on the particular forms supplied to them. It is desirable therefore, that a customer draws cheques only on the forms supplied to him by his banker and not even use the forms supplied to other customers.

Dating of Cheques.

The drawer of a cheque is expected to date it before it leaves his hands, as otherwise it will be difficult to determine whether or not the cheque has been in circulation for an unreasonable length of time. In case a cheque has not been dated by the drawer, any holder can insert a date. According to *Griffiths* v. *Dalton* (1940), 2 K.B. 264, the *prima facie* authority to fill in the date given by section 20 of the Bills of Exchange Act to the person in possession of the cheque must, at common law, be exercised within a reasonable time. Although the banker on whom the cheque has been drawn can fill in the date, undated cheques are usually returned unpaid by most of the banks.

ANTE-DATING AND POST-DATING—The drawer can date a cheque with a date earlier or later than the one on which it is actually drawn. If a cheque is post-dated, it is no longer an instrument payable on demand and therefore, strictly speaking, it should be stamped as a bill of exchange. However, when a post-dated cheque is presented on or after the date given on it, the paying banker should have no objection to honour it merely on the ground of its being originally post-dated. The drawer of a post-dated cheque can be sued after the ostensible date of its issue (*Walter Mitchell* v. *A. K. Tennent,* 52 Cal. 677 (682).

THE PAYEE—It has been seen that a cheque can be made payable to the order of a specified person or to the bearer thereof. The words "Pay to—Order" are to be construed as equal to "Pay to my order" (The Practice and Law of Banking, H. P. Sheldon, 2nd Edition, p-8). It is doubtful, however, if a cheque payable "to———or order" is valid, in view of *Chamberlain* v. *Young* (1893), L. R. 2 Q.B. 206; so long as the blank space remains unfilled. If, however, the blank space left between "Pay" and "Order" is filled in by the holder, the paying banker would be justified paying the amount to the person named or his order (*Heency* v. *Addy* (1910), 2 I. R. 688).

On the other hand a cheque made payable to———or bearer is considered to be good. Section 7(1), lays down "where a bill is not payable to bearer the payee must be named." Sir John Paget says "The normal cheque is one in which there is a drawer, a drawee banker and a payee or no payee but bearer."

A cheque can be made payable to two or more persons jointly or in the alternative to one of two or more several payees. Cheques are sometimes made payable to fictitious persons, but in such cases they are treated as bearer cheques. Cheques in favour of impersonal payees, *e.g.*, wages, petty cash, etc., used to be generally cashed as bearer cheques. However, in the recent case of *North and South Insurance Corporation, Ltd.* v. *The National Provincial Bank, Ltd.* (1936). 1 K.B. 328, Branson J. held that a cheque drawn in favour of an impersonal payee, such as "cash" or "wages", etc., or "order," was not a cheque at all, but a mere mandate to the banker to pay cash to the person who

present the document containing the mandate. The reasoning, by which His Lordship arrived at the conclusion, was, that a cheque, as defined in section 73 of the Bills of Exchange Act, 1882 (45 & 46 Vict., c. 61) was a bill of exchange drawn on a banker payable on demand and that a bill of exchange, as defined by section 3 of the same Act, was an unconditional order in writing to pay to or to the order of a specified person or to bearer. A document containing a direction to pay "cash" or "order", was not payable to a specified person as required by section 3 *supra*. Thus in His Lordship's opinion, such a document, not being a bill of exchange, the wrongful holder of it cannot give a better title than he actually had. Distinction may, however, be drawn between such instruments and those which are made payable to "Water Rate or order" or "Income-tax or order" which are obviously payable to a water authority or the Income-tax Department.

RESTRICTIVE PAYEE—If it is desired that the payment of a cheque should be made to the payee only, it is necessary to add the word "only" after the payee's name and strike off the words "bearer or order". As the law stood before the passing of the Negotiable Instruments (Amendment) Act 1919 the effect of merely striking off the words "order" or "bearer" after the payee's name was to restrict its negotiability, although bankers in India, like their *confreres* in England, treated such cheques as "order" cheques. This conflict between law and practice was pointedly brought out by the Bombay High Court (*Dossabhai* v. *Virchand* (1919), 21 Bom. L.R. 1, see p. 8, *ante*), which led to the passing of the Amendment Act with the object of nullifying the effect of the decision in that case and to make such cheques negotiable.

AMOUNT OF THE CHEQUE—It is necessary to mention clearly the amount of money which the drawer desires his banker to pay. The sum is usually stated in words as well as in figures so as to avoid mistakes. No blank space should be left on the cheque before and after the amount, stated in words and in figures. Thus a cheque for Rs. 8 in which spaces have been left after the word "eight" and the figure "8" could be easily altered to "eighty" in changing the word and figure into "eighty" and "80" respectively. If a customer draws a cheque innocently, but carelessly leaves blank spaces before or after the words and figures specifying the amount and his banker pays the forged amount, because the fraudulent alteration is not noticeable even by the exercise of reasonable care on the part of the banker, the latter would be justified in debiting the former's account with the amount actually paid (*London Joint Stock Bank* v. *MacMillan and Arthur*, [1918] A C. 777).

DEVICES TO PREVENT FRAUDULENT ALTERNATION IN AMOUNT—In order to prevent fraudulent alteration in the amount of cheques, various divices are used in modern times. The use of Protectographs and perforating machines for this purpose is found satisfactory. Some banks use a special kind of paper for their cheque forms which makes apparent any obliteration made with the help of certain chemicals. Words such as "Below rupees one hundred" are sometimes written at the top of or across the cheques.

CHEQUES IN FOREIGN CURRENCY—We have already stated, that there appears to be no legal objection to cheques being drawn in foreign currency, in which case the payment should be made at the rate of exchange current at the time of presentation. In *Cohn* v. *Boulken* (1920), 36 T.L.R. 767, where the cheque was drawn for 7,680 francs (Paris) on one of the London offices of the London County Westminster and Parr's Bank Ltd., evidence was tendered to the effect that it was the settled practice of bankers to pay, to the payees of such cheques, the amount in sterling at the rate current on the day and at the hour

of presentation and to debit the drawer's account with the same, and the judge ruled that the document was for a sum certain within the meaning of section 8 of the Bills of Exchange Act, 1882 (45 & 46 Vict., c. 61) and was, therefore, a cheque. However, it is the practice of bankers in England to offer a draft for the amount in foreign currency, in case the holder is not satisfied with the rate at which the paying banker offers to convert the cheque in foreign currency into home currency.

MATERIAL ALTERATIONS—It may be stated generally that an alteration is material, which in any way alters materially or substantially the operation of the instrument and the liabilities of the parties thereto, irrespective of the fact whether or not the change is prejudicial to the payee. Any alteration is material, which alters the business effect of an instrument, if used, for any business purpose (*Aldous* v. *Cornwell* (1868), L.R. 3 Q.B. 573) with the result that any change in an instrument, which causes it to speak a different language in legal effect from that which it originally spoke, or which changes the legal identity or character of the instrument, either in terms or the relation of parties thereto, is a material alteration (*Gourchandra Das* v. *Prasanna Kumarachandra*, 33 Cal. 812, 816). The instrument thus altered, may not be regarded as a cheque at all. Under the Indian law it is void (section 87 of the Negotiable Instruments Act, 1881 (XXVI of 1881)).

Slingsby and Others v. *Westminster Bank Ltd.* In a recent case *Slingsby and Others* v. *The Westminster Bank Ltd.* (1931), I K.B. 173, one Cumberbirch, a solicitor of good repute and standing, altered a cheque which he had himself made out in favour of a firm of stock-brokers, as "Pay to John Prust and Co., or order," and had it signed by the executors as drawers. The cheque was made payable to "John Prust & Co." after which blank space was left. Instead of handing it over to Prust & Co. and instructing them to buy the war loan for which purpose the cheque was originally drawn, Cumberbirch altered the cheque by writing in the space left before the words "or order," the words "Per Cumberbirch and Potts." Thus the whole of the filling of the cheque, save the drawers' signatures, was in the handwriting of Cumberbirch. Needless to say, none of the executors knew of or authorized the alteration. Cumberbirch, thereafter, indorsed the cheque as "Cumberbirch and Potts," and filling a paying-in slip at the Manchester branch of the Westminster Bank Ltd. paid it into the account of a company, the Palatine Industrial Financial Co., Ltd., of which he was a chairman and to which he was indebted. When the roguery came to light after about four months, the executors, as true owners of the cheque, brought an action against the Wesminster Bank Ltd. claiming, that by collecting its amount, they had wrongfully converted it. Mr. Justice Finlay, who heard the case, held that no action could be brought on it against the defendants, as the document when it came into their hands was not a valid cheque at all, by reason of the unauthorized alteration made in it. The defendants had neither dealt with a cheque nor with the money of the plaintiffs. In his opinion, no question of negligence really arose and he added that "apart from section 82 of the Bills of Exchange Act, 1882(45 & 46 Vict., c. 61) there can be no question of negligence, for there was no contractual relation between the defendants (Westminster Bank) and the plaintiffs (executors); and section 82 is in my opinion inapplicable because this document when it came into the hands of the bank was *not a cheque.*"

Slingsby and Others v. *The District Bank Ltd.* The executors, thereupon, brought an action, this time against the paying bankers, the District Bank

(1931), 2 K.B. 588 claiming to be relieved of the debit of the £5,000 and alleged wrongful conversion of that amount on the ground that J. Cumberbirch unlawfully and without any authority had effected a material alteration in the cheque within section 64(1) of the Bills of Exchange Act and that the actual indorsement was irregular. They also alleged that the defendants were guilty of negligence and breach of duty to the plaintiffs in paying the cheque without due and sufficient enquiry. The defendants, however, put forth the plea which in the words of Lord Atkin was thus stated, "the customer, on his part, undertakes to exercise reasonable care in executing his written orders so as not to mislead the bank or to facilitate forgery," *vide* p. 27, *ante*. Mr. Justice Wright, however, decided that on the actual facts of the case before him, there was no absence of "reasonable care" so as to result in any breach of contractual duty on the part of the drawers of the cheque. It was not a breach of duty to leave a space between the name of the payee and the words "or order," and, therefore, the plaintiffs were entitled to the relief which they claimed. Scrutton L. J. was satisfied in appeal, that it was not then "usual precaution" to draw lines before or after the name of the payee, and he pertinently added, that if that sort of case became frequent, it might become a "usual precaution." It was also held by Mr. Justice Wright in the lower Court and upheld in appeal by Scrutton L.J. that even if the cheque was valid, which it was not as the invalidity came by reason of the material alteration, before any question of indorsement could arise, it was not properly indorsed. The indorsement should have been in accordance with the mandate contained in the cheque.

Examples of Material alterations—From the decision in the above case, it is clear that a banker must be very careful whenever there is a material alteration in the cheque presented. He should see that such alteration has been made with the drawer's consent or authority and is confirmed by his signature. As to the various instances of material alterations, the following are important:—

(1) alteration of the date of the instrument with the purpose of accelerating or postponing the time of payment;

(2) alteration of the place of payment;

(3) alteration of the sum payable or the rate of interest it carries;

(4) alteration affecting the number or relation of the parties or their legal character.

Alteration of the date of a cheque, or the changing of an "order cheque" into a "bearer cheque" requires initials, although in the latter case certain banks require full signature. Other material alterations should generally be evidenced by the full signature of the drawer. In case of cheques drawn by two or more persons jointly, material alterations require the initials or the signatures, as the case may be, of all the drawers. In the case of cheques drawn by registered companies and other corporate bodies, alterations must be confirmed by all the signatories.

Signatures—In order to make the instrument a valid cheque, it must be signed by the drawer himself or by some person duly authorized by him. In the latter case, unless the banker has been supplied beforehand with a specimen signature of the person signing on behalf of the customer, the banker cannot be expected to honour such cheques, as he cannot satisfy himself about the genuineness or otherwise of the signatures on the cheques. When an attorney

is appointed by power of attorney, the power of attorney must be registered with the banker before cheques are drawn by the attorney. When the signatures are put by means of rubber stamps, cheques should not be honoured, as it is difficult to say whether they are thus stamped by the authority of the drawer, or by a third person. There is no legal objection to a cheque being signed in pencil, although from the paying banker's point of view, it is a very undesirable practice; as such signatures are easily blurred or defaced. When a person is too ill to sign his name, he may have his mark witnessed by his medical attendant and another person. The medical attendant should certify that the drawer of the cheque though too ill to sign it was in full possession of his faculties at the time of making the mark. Specially printed forms with the names and addresses of the drawers, who are traders, are sometimes supplied to customers drawing a large number of cheques. Some banks allot a number to every customer having a current account and stamp it on every cheque form in the blank cheque books supplied to him. Where this practice is adopted a cheque will bear two numbers, *i.e.*, the cheque number and the customer's number. This facilitates the finding out the name of the drawer, when his signature on the cheque may not be quite legible. The customer should sign the cheques in accordance with the specimen signatures supplied by him to his banker, otherwise the latter may have to dishonour and return them with a slip marked "signature differs." It is, however, not necessary that the drawer of a cheque should always sign his own name. He may sign for instance, as "Delhi Stationery Mart," the name under which he is carrying on his trade or profession, provided of course the account is kept in that name (Practice and Law of Banking by H. P. Sheldon, 5th ed., p. 4). However, banks usually discourage such a form of signature.

Illiterate persons—In the case of illiterate persons, cheques can be signed or indorsed by means of a mark witnessed preferably in the banker's presence by a person known to him who should also give his or her address. As far as possible, this witness should be some one not in the employment of the bank.

Intelligible mistakes do not vitiate the validity of cheques—The validity of cheques is not vitiated by mistakes which can be easily discovered and which are apparent. An instrument is not rendered invalid by an apparent or intelligible mistake, *e.g.*, an omission in the written words, as long as the intention is quite clear—see Halbury's Laws of England, 2nd edition, Vol. II, p. 713. Thus, a bill where the word "pound" is used instead of "pounds" does not thereby become invalid.

Crossed Cheques.

The origin of crossing—After drawing a cheque, its drawer has to decide whether or not he should cross it. In England, until the early fifties of the last century, cheques were almost invariably drawn payable to bearer, because the Stamp Acts of 1782 and 1815, while they subjected bills in general to duties, varying according to their respective amounts, only levied a uniform duty of one penny on drafts on bankers, payable to bearer on demand. Prior to the year 1853, when drafts on a banker, payable to order on demand, were rendered valid if stamped with one penny stamp, it had long been usual with bankers' clerks, presenting cheques at the Clearing House, to stamp the names of their banks across the cheques as an indication of the channel through which they were presented; as cheques were generally payable to bearer, other persons

also with a view to present their proceeds going into the hands of persons having no title to them, generally, crossed them with the names of the bankers through whom the payment was desired to be made. When the name of the payee's banker was not known, it became usual to cross the cheque with two lines and insert the words "& Co." between them to indicate that it was to be paid through some banker. In those days there were not many joint stock banks; and the banking business was largely in the hands of banking firms. Crossing also ensured safety, in case a clerk, carrying cheques to the Clearing House, was assaulted and robbed.

LEGAL RECOGNITION OF CROSSING—In the year 1856, the crossing, which was till then considered to be a memorandum to the banker, became a subject of legislation. It was enacted, that, where a cheque was crossed merely with two lines with or without the words "and Co.", the cheque must be presented through some banker and when crossed in favour of a particular banker, its payment should be made only to that banker or another banker, being agent for collection of the former bank. The Statute of 1856 (19 & 20 Vict., C. 25) imposed the obligation on a paying banker, to make payment of crossed cheques only to or through some banker, as directed by the crossing. In *Simmons* v. *Taylor* (1857), 2 C.B.N.S. 528, however, the Court of Common Pleas and the Exchequer Chamber laid down that crossing was not an integral part of a cheque that its erasure did not amounted to forgery and this view was upheld on appeal. To nullify the effect of this decision, Act of 1858 (21 & 22 Vict., c. 79-18) was passed, which declared crossing to be a material part of a cheque once it was there and thus was laid the foundation of the law of special crossings, as it now stands. The holder of a cheque was recognized to have the power to cross it, but no express remedy was given to him against the banker, who paid the cheque in disregard of the crossing. It was also laid down that if any person obliterated, added to, or altered the crossing with intent to defraud, he was liable to transportation for life.

In 1876 the two Acts of 1853 and 1858 were repealed. The new Act contained, in its first eight clauses, the combined effects of the previous Acts.

GENERAL CROSSING DEFINED—Section 123 of the Negotiable Instruments Act, 1881 (XXVI of 1881) defines a general crossing as follows:—

> Where a cheque bears across its face an addition of the words "and Company" or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words "not negotiable" that addition shall be deemed a crossing and the cheque shall be deemed to be crossed generally.

SPECIAL CROSSING DEFINED—Special crossing is defined in section 124 of the Negotiable Instruments Act, *supra*, as follows:—

> Where a cheque bears across its face an additional of the name of a banker with or without the words "not negotiable," that addition shall be deemed a crossing and the cheque shall be deemed to be crossed specially and to be crossed to that banker.

SIGNIFICANCE OF A GENERAL CROSSING—Forms (1) to (4) are specimens of general crossings. The words "& Co." are written on the cheque when the drawer does not know the name of the payee's banker though they do not form a necessary part of the crossing. By crossing a cheque generally, the banker is directed not to make payment except through another banker and thus a person, who is not entitled to receive its payment, is prevented from getting the cheque cashed at the counter of the paying banker.

SIGNIFICANCE OF SPECIAL CROSSING—Forms (5) to (8) given above are specimens of special crossings. It will be seen that a special crossing requires the name of the banker to be written on the face of the cheque, to whom or to whose collecting agent, another banker, payment of the cheque should be made. Lines are not essential for a special crossing. A special crossing makes the cheque still safer, as a person having no claim, will find it difficult to obtain payment, except through the banker named in the crossing, who is likely to know the payee, and, therefore, will not collect it for any other person. In order to avoid all risks of a thief obtaining payment instead of the rightful owner of a cheque, the words "payee's account" or "account payee" should be added to the crossing, which will ensure that the receiving bank is to collect the amount for the benefit of the payee's account only. This addition to the crossing does not affect the paying banker, who is not required to see that the cheque is collected for the payee's benefit. It is quite safe to send such cheques through the ordinary post for the reason stated above.

"NOT NEGOTIABLE" CROSSING—There is another form of crossing bearing the words "not negotiable," which serves almost the same purpose as in the case of crossing with the words "Payee's a/c." The effect of these words is stated in section 130 of the Negotiable Instruments Act, 1881, which lays down that a person taking a cheque crossed generally or specially, bearing in either case the words "not negotiable," shall not have and shall not be capable of giving, a better title to the cheque than that which the person, from whom he took it in the first instance, had. It does not, as is sometimes erroneously assumed, make the cheque not transferable but it deprives the cheque of the special feature of negotiability. Such a cheque is like a stolen fountain pen or a watch, the transferee of which does not get a better title than that of the thief (*Great Western Railway Co.* v. *London & County Banking Co.* [1901] A.C. 414). The question which arises in this connection is whether the words "not negotiable" have any legal meaning or significance beyond the arbitrary or special meaning attached to them by statute, *i.e.*, when they appear on a cheque as a part of crossing. Sir John Paget's view was that they have no meaning at all and could be justifiably ignored. In *Hibernian Bank* v. *Gysin & Hanson* (1938) 2 K.P. 389, it was held that where the words " not negotiable" appear on a bill they must be assigned their ordinary meaning in law which is, that the instrument is deprived of both the characteristics of negotiability, *i.e.*, transferability free from defects and transferability by endorsement. For specimens of General and Special Crossings see page 118.

WHO CAN CROSS A CHEQUE?—It will be clear from the above that the drawer of a cheque can, if he desires, cross it. When he issues an open cheque, any holder of it can cross it generally, convert a general crossing into a special one, or add the words " not negotiable." When a cheque is crossed specially, the banker in whose favour it is crossed, may again cross it specially to another banker, the latter acting as agent for collection for the former. If a cheque is crossed by the drawer, he alone has the right to cancel the crossing by writing the words, " pay cash," across the cheque and by putting down his full signature thereto on the cheque.

ISSUE OF CHEQUE—Unless the cheque is handed over in a complete form to the payee, with the intention that the proceeds thereof shall be paid to him or his order, or to the bearer, it is not regarded as issued. The liability of the drawer commences with the proper issue of the cheque and is unaffected by the fact that the issue thereof resulted from fraud practised upon the drawer. According to section 21 of the Bills of Exchange Act, 1882 (45 & 46 Vict., c. 61) which corresponds to section 46 of the Negotiable Instruments Act, 1881

DIFFERENT FORMS OF CROSSING

Specimens of General Crossings

1

2

& Co.

3

Not Negotiable.

4

Payee's Account.

Specimens of Special Crossings.

5

The Bank of India, Ltd.

6

The Central Bank of India, Ltd.

7

Account Payee.
The Imperial Bank of India.

8

Not Negotiable.
The Punjab National Bank, Ltd.

(XXVI of 1881), the drawer is not liable for a cheque, until he has issued it or unless he is precluded from denying its issue. The Indian law requires delivery of the cheque either actual or constructive for any liability to be fastened thereon. It is to be remembered that if the cheque gets into the hands of a holder in due course, a valid delivery of the same by all prior parties, so as to make them liable to him, is presumed, until the contrary is proved (section 21, *supra*).

LOSS OF CHEQUES IN TRANSIT—It is advisable for mutual safety that cheques sent by unregistered post, should be specially crossed. However, should a bearer, uncrossed, or a generally crossed cheque, be sent by ordinary post at the request of the payee and should it be stolen in course of transit by a thief who is successful in receiving payment for the same, the loss will have to be borne by the payee, on the ground that he employed the post office as his agent. However, the mere sending of a cheque by post does not amount to delivery within the meaning of section 46 of the Negotiable Instruments Act, 1881 (XXVI of 1881). In *Jagjivandas Jamnadas v. The Nagar Central Bank Limited*, 28 Bom. L.R. 226 (229), it was held that, simply because it was a practice of the plaintiff to send his cheques and *hundis* by ordinary post, it did not amount to a request from the indorsee firm and that it approved of the mode of sending cheques or hundis by ordinary post. The paying banker was not held liable, because he was not negligent and had paid the cheque according to its tenor in the ordinary course of his business. It is hard to believe that any drawer would in his own interest send such instruments by ordinary post. If he does so, the loss would devolve on him, in case the cheque is lost in transit, as the post office is regarded as his agent.

HOLDER DEFINED—Before considering the legal position and rights of the payee, it will not be out of place to examine the legal definition of "holder." Section 8 of the Negotiable Instruments Act, 1881 (XXVI of 1881) defines a "holder" as follows:—

> The "holder" of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.
>
> Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

Section 2 of the Bills of Exchange Act, 1882 (45 & 46 Vict., c. 61) defines a holder thus:—

> "Holder" means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.

POSITION OF THE HOLDER—Against the definition given in the Indian Act it has been urged, that, *firstly*, the term "holder", as defined, does not include a person, who, though in possession of the instrument, has not the right to recover the amount thereon from the parties, such as the finder of a lost instrument. In this respect it differs from the definition of the term given in the Bills of Exchange Act, *supra*. *Secondly*, no person can sue on a negotiable instrument, unless he is named therein as a payee, or unless he gets his title as an indorsee or bearer. *Thirdly*, it is clear that the title of the person claiming as holder must be acquired lawfully. A person, who takes the instrument either under a forged or invalid indorsement such as that of a thief, cannot be regarded as a "holder."

PAYMENT OF LOST CHEQUE TO BE STOPPED THROUGH ITS DRAWER—Whereas in case of dishonour, the holder has the right to claim the amount of the cheque from either its drawer, payee or indorsers, he has no claim, except in the case of

certain kinds of marked cheques or in cases covered by section 129 of the *Negotiable Instruments Act*, 1881, against the paying banker; for there is no privity of contract between the holder of a cheque and the banker on whom it is drawn. It is for this reason that, when it is desired to stop the payment of a lost cheque, the holder has to ask the drawer to instruct the banker to do so, as otherwise, the paying banker may refuse to act according to the instruction of the holder of the cheque. However, there is no harm in intimating to the banker about the loss so as to put him on his guard. At the same time, the drawer should be asked to stop the payment of the cheque. The paying banker's attitude in the matter is quite justifiable, for the simple reason that he is bound by statute to honour his customer's cheques, or in case of wrongful dishonour he makes himself liable to pay damages to his customer. In the absence of instructions from his customer, he has no means of knowing how far the statement of a person representing himself to be the holder of a cheque is correct However as a rule, bankers take special precautions before honouring cheques reported to have been lost.

MARKING OF CHEQUES- Where a drawer is not known to the payee, he may sometimes ask his banker to mark his cheque as good. But, unless the custom of the place or the usage of traders gives such marking the effect of acceptance and binds the banker to pay the cheque in the hands of the payee, or any other holder, provided it is duly presented within the period specified by the banker and if no such period has been fixed a reasonable period, the only effect of marking or initialing a cheque is to give it additional currency by showing on the face that the cheque was drawn in good faith on funds sufficient to meet it. When such marking by usage amounts to an undertaking by the bank to honour it, it adds the credit of the banker to that of the drawer. (*Gaden* v. *Newfoundland Savings Bank*, [1899] A.C. 281). In this connection attention is invited to the recent ruling of the Privy Council in the case of the *Punjab National Bank, Ltd.* v. *The Bank of Baroda, Ltd.* (48 C.W.N. 810). The material facts of the case are given below:—

In May 1939 one Mr. Ghose opened an account with the Bank of Baroda, Ltd., at Calcutta on the understanding that he should be allowed "temporary accommodation from time to time" and one Mr. Mitter purported to guarantee that account. Mr. M. P. Amin was the Manager of the Calcutta branch of the Bank of Baroda, Ltd., and Mr. Bhagwandas was the Manager of the Calcutta branch of the Punjab National Bank, Ltd., where Mr. Mitter had an account. On the 13th June 1939 Ghose's account with the Bank of Baroda showed a debit balance of Rs. 89,274. Mitter's account with the Punjab National Bank had a debit balance of Rs. 35,000 on the same date, and on the said date Mitter brought to the Punjab National Bank two cheques dated 13th June 1939 drawn by Ghose on the Bank of Baroda. Both these cheques which were drawn in favour of Mitter were marked on their face with the words "Marked good for payment up to 20th June 1939" and with the signature of Mr. Amin on behalf of the Bank of Baroda. One of these cheques was for Rs. 1,40,000 and the other for Rs. 1,35,000. Mitter took these cheques to the Punjab National Bank and told its Manager that they would not be paid till the 20th of June 1939 and requested permission to draw Rs. 2,40,000 against them. Mr. Bhagwandas said that he wanted a cheque the date of which was the same as that on which payment was to be made. Mitter then took away the cheques and returned a little later on the same day with one cheque dated 20th June 1939 drawn by Ghose on the appellant Bank in favour of Mitter or order, for Rs. 2,75,000. The cheque was crossed "& Co." and on the face of it were

written crosswise the words "Marked good for payment on 20-6-39. For the Bank of Baroda, Ltd., M.P. Amin, Manager." Mitter endorsed the cheque generally and handed it to the Manager of the Punjab National Bank with two letters in which he asked the said Bank to credit Rs. 2,75,000 to his account "on realization on due date" and also requested an overdraft of Rs. 2,40,000 besides the previous balance, which he promised to adjust on 20th June 1939. The Punjab National Bank, Ltd., on the same day drew a cheque for Rs. 2,40,000 on the Imperial Bank of India, Calcutta, and gave it to Mitter who duly cashed it.

As the authorities at the Head Office of the Bank of Baroda, Ltd., suspected Mr. Amin of having committed irregularities, they suspended him on the 19th June 1939 and early next day a notice was sent to the respondent and other banks informing them of the cancellation of power of attorney granted to him, in whose place another Branch Manager was appointed. On the 20th June 1939 the Punjab National Bank which had become apprehensive, sent their cashier and their accountant to the Bank of Baroda as soon as it opened for business that morning to present the cheque for Rs. 2,75,000 over the counter for payment after it had been endorsed by the Manager of the Punjab National Bank. Ghose's account at the time showed a credit balance of seven annas and three pies only and consequently the drawee bank refused payment and returned the cheque with a memorandum attached "not arranged for."

After some correspondence between the two banks the Punjab National Bank sued the Bank of Baroda with Ghose as drawer and Mitter as endorser of the cheque and stated in their plaint after setting forth the above facts to the effect that they advanced Rs. 2,40,000 to Mitter on the security of a cheque certified by the Bank of Baroda, Ltd. on the understanding that it would be honoured in terms of the certificate and that Mr. Amin in certifying the cheque on behalf of the Bank of Baroda, Ltd., had acted in the course of his employment and within the scope of his authority. It was stated that the certification was in accordance with the customs and/or usage prevailing amongst banks in Calcutta and that the effect of such certification was to show that the cheque was drawn in good faith and against funds sufficient to meet its payment. Neither Mitter nor Ghose appeared in the suit. The Bank of Baroda, Ltd., in their written statement denied the authority of Mr. Amin to mark or certify the cheque and further denied that they made the latter representation and that the bank in making payment to Mitter acted on the alleged representation. The custom of bankers in Calcutta to mark or certify cheques pleaded in the plaint was also denied. The Bank of Baroda, Ltd., further contended that in law the certification or the marking of the cheque in question by Mr. Amin did not impose on them any liability.

Some Calcutta bankers deposed of the existence of a practice to mark or certify cheques, before the trial judge, but it was clear that there was no satisfactory evidence regarding the practice of certifying post-dated cheques. In spite of that the trial judge gave his judgment in favour of the plaintiff bank on the ground that the certification of such a cheque by the Bank of Baroda constituted an acceptance within the meaning of the Negotiable Instruments Act and he went on to hold as further ground that the evidence showed that bankers at Calcutta were by usage liable on cheques certified by them when presented by parties entitled thereto. He, however, did not deal specifically in the case in which the cheques were post-dated.

On appeal the judgment of the trial judge was affirmed. The Chief Justice of the High Court at Calcutta who delivered the judgment of the Court rejected the appeal on the ground that the marking or acceptance of the cheque was in law an acceptance by the appellant bank and accordingly the question of usage did not arise. He said, however, that the evidence was insufficient to enable him to hold that the custom alleged was established. He was prepared to consider the evidence that banks in Calcutta which marked cheques regarded the certification as an acceptance which made them legally liable to pay and honour their obligation. The Chief Justice did not deal at length with the objections to certifying post-dated cheques, though in the memorandum of appeal it was expressly urged that to certify a post-dated cheque was outside the Manager's authority and was outside any custom or usage.

The Bank of Baroda went up to the Privy Council which reversed the judgment of the Appellate Court and gave their decision in favour of the Bank of Baroda, Ltd., on the following grounds:—

(1) A cheque though a bill of exchange is of a special type which in the ordinary course is never accepted. Whereas a bill is dishonoured by non-acceptance this is not so in the case of a cheque, because the holder of a cheque as between himself and the drawer has no right to require acceptance. The liability of the bank depends on the contractual relationship between the bank and the drawer, its customer. It is different in the case of an ordinary bill; the drawee is under no liability on the instrument until he accepts; his liability on the bill depends on his acceptance of it. As between the drawer and his bank, acceptance of a cheque is superfluous, as the customer's right to draw a cheque depends on his having satisfied the contractual conditions which require the bank to honour his mandate to pay the cheque. But if the bank (at least at the drawer's request) accepts the cheque, he should be entitled to protect himself as against his customer by setting aside the appropriate funds standing to the customer's credit.

(2) Both Chalmer in his "Bills of Exchange Act" and Paget on "Law of Banking" are of opinion that marking or certification is neither in form nor in effect an acceptance of which the holder or payee can avail himself.

(3) Although a custom has grown up amongst bankers themselves of marking cheques as good for payment for the purposes of clearance by which they become bound to each other and such a practice did prevail in Calcutta subject to the regulations of the Calcutta Clearing Banks' Association, however, this practice seems to be simply that after clearing hours if a cheque is presented for clearing, it may be marked in which case it will be paid on the next day when clearing business is resumed. It is true that in such a case the bank marking the cheque is bound to pay the amount to the other bank as a result of judicially established custom. This certification or marking cannot, however, be identified with an acceptance, the effect of which is to create a negotiable liability.

(4) The certification which was relied on as constituting acceptance of the cheque was not an acceptance within the meaning of the English or Indian Act or the common law.

(5) The point whether the certification imported a promise by the certifying bank to pay the amount of the cheque whether or not there were funds to meet it depended on the existence of a contract between the respondent bank and appellant bank, which in the view of Their Lordships did not exist

and consequently the respondent bank should not be considered as a holder of the certified cheque. As the certification of cheque was not negotiable as an acceptance in the proper sense, the respondent bank could not be considered as a holder in due course of the certified cheque. There was neither privity of contract nor any consideration passed between the appellant and the respondent in respect of the certification on the cheque.

(6) The certification might be construed as words of representation, as to the genuineness of the cheque and of the signature. If the cheque had not been post-dated, the certification might also be held to include a representation as to the then sufficiency of the drawer's account, but as the cheque was not due for payment until seven days later, a representation as to the then position would not go very far. If it was to be construed as a representation that on the due date there would be funds available, it necessarily amounted to a promise and the want of consideration would be fatal to its enforceability.

(7) The ostensible authority of the Manager did not extend to cover the certification of post-dated cheques and that in the present case he had no actual authority to do so.

(8) Their Lordships were not unconscious that bankers regard their work as their bond and honour their signature even though they might have an answer in law. This was specially true as between banker and banker, but as a court of law has to decide a case according to law and not on grounds of banking ethics or etiquette or good banking policy as a matter of business, it regards a gentleman's agreement or honourable obligation as having no validity in law.

In view of the above decision, the practice of marking cheques cannot be looked upon with favour by bankers and such a practice except for clearing out purposes should be put an end to.

Assured cheques—In this connection mention may be made of the interesting suggestion put forward by Mr. R. C. Knight for the use of "assured cheque" (Bankers', Insurance Managers and Agents Magazines, February 1940, p. 207). According to this suggestion, bankers should issue books of cheques imprinted for sums most likely to be useful to their customers. On the issue of the book the bank would debit the customer's account with the maximum sum covered by the imprinted cheque just as is done by the issue of travellers' cheques. The cheques could be drawn for any sum not exceeding the sum stated on their face and as each cheque is presented for payment any balance below such a maximum sum would be credited to the customer's account.

Payee's rights and duties—Assuming that the cheque has reached the hands of the payee, we have to examine his rights and duties. By accepting a cheque, the payee does not lose his right to claim the amount due to him, in case the cheque is dishonoured. He can either base his claim on the original debt, in payment of which the cheque was given to him, or he can sue the drawer of the cheque for the amount thereof, provided that the payee is not guilty of negligence in presenting it for payment resulting in a loss to the drawer. For instance, if the drawer gives the cheque to the payee on a certain day and the cheque is not presented for payment to the banker for a month thereafter, during which period the banker, upon whom it is drawn, fails, and if the drawer had sufficient balance for meeting the cheque at the time it was drawn, the drawer's liability to the holder will be reduced to the extent of the loss which the former suffers through the negligence of the holder in not presenting it for

payment within a reasonable time after receiving it. It has already been explained that the holder of a cheque, whether he is the payee or the indorsee, has no right of action against the banker upon whom the cheque is drawn, unless either the latter pays the amount of the cheque contrary to the directions given by the crossing thereon (see section 129 of Negotiable Instruments Act, 1881 (XXVI of 1881)), or has in accordance with the custom of the bankers, marked the cheque as good for payment.

MEANING OF REASONABLE TIME FOR PRESENTATION OF CHEQUES—The question as to what is a reasonable period during which a cheque may be presented depends upon various circumstances, such as the distance at which the persons live from each other, the course of dealings with respect to similar instruments and the nature of the instrument (section 105, *ibid.*; 11 Cal. 34). In a case a County Court Judge held that a cheque dated twelve days before it was negotiated by a thief to a publican was overdue (Legal Decisions Affecting Bankers, Vol. III, p. 226). Speaking generally, the cheque must be presented for payment or paid into the bank by the following working day. The examples given below will make clear the meaning of "reasonable time" as regards presentation of cheques :—

1. A cheque for Rs. 500, drawn by Mr. A. K. Joshi on a bank in Bombay, is received by Mr. T. S. Karaka of the same city on 1st March, 1932. In the absence of sufficient cause for delay, Mr. Karaka, must, in order that he may rebut the charge of negligence in holding the cheque for an unreasonably long time, either have it presented to the paying bank, on the following working day, or have it sent that day into his own bank, in which case, it should be presented by the collecting banker on or before the next following working day after its receipt.

2. If the drawee bank, upon which the cheque is drawn, is not situated in the same place where Mr. Karaka carries on his business, the latter must post the cheque to an agent in the town where the paying bank is situated or pay it into his own bank, not later than the following working day.

DRAWBACKS OF PROTRACTED CIRCULATION—It is for this as well as for certain other reasons, that a cheque received should not be transferred by its recipient to his creditor, but should be sent without delay for collection to his own bank. If the presentation of the cheque is delayed, it may not be honoured owing to the drawer's insolvency, or as a result of the balance to his credit being depleted, either of which may lead to subsequent loss and inconvenience. Moreover when a person's creditor receives a cheque drawn by a client of the former, the creditor may like to have direct dealings with the client of the person, with the result that such person may lose his business. Again, the transference of a cheque from hand to hand may delay its presentation at the drawee bank, which may in the meantime go into liquidation. There is also the danger of the cheques remaining in circulation for an unreasonable period and being refused payment on the ground of having become stale. When a cheque remains in circulation for an unreasonable period, which is generally six months according to the practice of the bankers, it is returned with a slip marked "stale, requires confirmation." Hence, it is advisable not to transfer a cheque received from one's debtor to one's creditor; one should send to one's own banker all cheques received and draw on him cheques for making payments to his creditors.

CHEQUE NOT AN ASSIGNMENT OF DEBT—It must be remembered that neither in India nor even in England, is a cheque regarded as an assignment of

the amount named therein out of the funds in the hands of the drawee for the payment thereof. Consequently, a payee in India cannot have a claim against the drawee bank, unless the bank has marked the cheque in circumstances which make him liable for the amount thereof. In Scotland, however, a cheque operates as an assignment of the sum for which it is drawn in favour of the holder, from the time it is presented to the drawee, therefore, a payee can claim the amount from the drawee bank. In France, the holder of the cheque is entitled to receive the amount from the drawee bank and can demand the whole of the credit balance of the drawer, in case it falls short of the amount of the cheque.

TRANSFERENCE OF CHEQUES—A bearer cheque, *i.e.*, a cheque payable to bearer or to a named person or bearer, is transferable by mere delivery, whereas, order cheques can be negotiated only by indorsement and delivery.

INDORSEMENT DEFINED—"When the maker or holder of a negotiable instrument signs the same otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto... he is said to indorse the same and is called the endorser." "Indorsement" is derived from the Latin term *in dorsum*, meaning "upon the back," which indicates that the usual place for an indorsement is the back of the instrument; this rule is generally applicable to all negotiable paper and means the writing of one's name on the back thereof with a view to negotiate the same. Although the validity of an indorsement on the face of an instrument, not being an Indian Government security, cannot be questioned in law, by reason of the provision made in section 15 of the Negotiable Instruments Act, 1881 (XXVI of 1881) quoted above, it is expedient in view of time-honoured practice that all instruments should be indorsed on their back. By section 6 of the Indian Securities Act, 1886, an indorsement inscribed elsewhere than on the back of the security itself is not valid. If, as a result of rapid circulation, the back of the instrument is entirely covered by indorsements, the holder, in order to provide space for any indorsements that will not go on the bill itself, may tack or paste on it a piece of paper—called an *allonge*—and subsequent indorsements may be made thereon (*Monmohinee Devi* v. *Secretary of State for India*, 13 B.L.R. 359,373).

KINDS OF INDORSEMENTS—Indorsements are of various kinds, such as "indorsement in blank," "indorsement in full," "conditional indorsements," "restrictive indorsements," etc. The mere signature of the indorser on the back of an instrument without mentioning the name of any specified person in whose favour the indorsement is made, is said to be an indorsement in blank. Such an indorsement makes it payable to bearer and consequently, the instrument thus indorsed can be negotiated by mere delivery. If, however, the indorser adds a direction to pay the amount specified in the instrument to, or to the order of, a certain person, then the indorsement is said to be in full. By inscribing his name on the back of an instrument, the indorser guarantees to his immediate indorsee or a subsequent holder in due course, that at the time it left his hands, he had a good title to it and that it was genuine in every particular. He also attests thereby, that all the indorsements made prior to his, are genuine. Ordinarily, an indorser binds himself to pay upon no other condition than the dishonour of the instrument on due notice of dishonour to him. However, if he likes he may make his own liability on the instrument subject to a condition, in which case the indorsement is termed a conditional indorsement. For instance, an indorser can add the words "Without recourse to me" to his indorsement and exclude his liability on the instrument. Again, he may make his liability dependent upon the happening of a contingent event or make the right of the indorsee to receive the payment in

respect of the instrument dependent upon the happening of such an event. The conditions thus added may be either conditions *precedent* or conditions *subsequent*. If the former, no right to recover the amount passes to the indorsee, until the fulfilment of the condition. However, if it be subsequent condition the indorsee's right is defeated on its fulfilment. Thus, if the indorsement is "Pay to X if he returns from England within a year," then the right to receive payment becomes absolute only if Mr. X arrives within a year from the date of the indorsement on the instrument. As another example of a condition precedent, it may be mentioned "Pay to X upon his atttaining majority." Here, the indorsee Mr. X, gets title to the amount only if he lives to attain the age of majority. If, however, a bill or note is indorsed "Pay to X or order, unless before payment, I give you notice to the contrary," it becomes an indorsement upon a condition subsequent and the title of the indorsee will be defeated, if, before payment, a notice not to pay is given to the acceptor or the maker thereof. The conditions attached to indorsements do not affect the negotiability of the instrument indorsed. In this, the conditional indorsement differs from another kind of indorsement known as the restrictive indorsement, by which the indorsee's right of negotiating the instrument indorsed is restricted or excluded by express words. Sometimes, a restrictive indorsement may merely constitute the indorsee, as an agent, to indorse the instrument or to receive its contents for the indorser, or for some other specified person. For example, if a person, Mr. P.N. Kapur, indorses any negotiable instrument payable to bearer as (*a*) "Pay the contents to S. M. Joshi only" or (*b*) "Pay S. M. Joshi for my use" or (*c*) "Pay S. M. Joshi for the account of Mr. P. N. Kapur" or (*d*) "the within must be credited to S.M. Joshi," Mr. Kapur will be restricting the negotiability of the instrument thus indorsed.

Legal incidents of negotiable instruments—We have so far dealt with special incidents of cheques but it must be remembered that a cheque is only a negotiable instrument having legal incidents which distinguish it from debts and all other kinds of movable property. It will therefore be not out of place to examine and consider them specially as bankers have to deal extensively in this class of securities in the ordinary course of business.

Contract Debts and Negotiable Instruments—Considered in one aspect, a negotiable instrument is nothing more than evidence of a debt and between immediate parties the law to be applied is the ordinary law of contract. It is only when the rights of transferees of negotiable instruments are considered that special features are met with which distinguish negotiable instruments from contract debts and every kind of movable property. Two illustrations may help to elucidate the point.

First illustration. *A* agrees in writing to pay *B* the sum of Rs. 1,000 in consideration of certain work which *B* has done for *A*; this is an ordinary contract debt. Now, if *B* desires to transfer the right or title to the money to *C*, he must do so by a regular assignment in writing signed by him. Let us further suppose that circumstances exist which preclude *B* from successfully maintaining a suit against *A*. This may happen if *A's* promise is without consideration, or the consideration is illegal or opposed to public policy, or *A* may have simply paid off *B*, allowing the document to remain outstanding in the hands of *B*. In each case, *C* the assignee will have no better rights than *B*. In a suit by *C* against *A*, the latter will be permitted to allege and prove against the plaintiff what he might have been allowed to plead in an action against him by *B*. To adopt the legal phraseology applicable to the case, the assignee or transferee of a debt or other property takes it subject to all equities and defects which exist in the hands of the transferor.

Second illustration. *A* steals a watch belonging to *B* and sells it to *C* who pays value for it and is absolutely ignorant of *A* having no title to it. C entrusts the watch to *D*, an auctioneer, who sells it in open auction to *E*. *B* can hold either *A*, *C*, *D* or *E* or all of them liable in conversion. Subject to certain exceptions which need not here be considered, the legal principle, in the alternative, may be formulated as follows : a transferor of property cannot pass to the transferee any better title than he has. In the illustration, *A* has no title, therefore the transferee *C* has none. *E* the ultimate transferee who claims through *C*, is therefore, also incapable of having any title to the watch.

NEGOTIABLE INSTRUMENTS AN EXCEPTION TO THE RULE—Negotiable instruments afford a striking exception to the general rule enumerated above. Let us suppose that in the first illustration, *A* has either given a cheque to *B* or executed a promissory note payable to *B*. If *B* desired to transfer, the right to the money to *C*, the law would not require any assignment in writing by *B*. *B* could pass title to *C*, if the instrument was payable to order, by endorsement and delivery, or if payable to bearer by mere delivery. Further, if *C* happened to be a holder in due course in the sense that he acquired the instrument before maturity and paid value for it having no notice of any defect in *B*'s title, none of the defences which we have considered in the first illustration would be open to *A*. *A* could not say, as against *C*, that there was no consideration or that it was illegal or opposed to public policy. The principle involved is that a holder in due course takes a negotiable instrument free from all defects in the title of his transferor.

NO CONVERSION OF NEGOTIABLE INSTRUMENTS BY HOLDER IN DUE COURSE—Let us next make a slight change in the facts of the second illustration. *B* is the payee of a promissory note passed in his favour by *C*. The note is expressed to be payable to *B* or order. *B* indorses it in blank and keeps it locked in his drawer. *A* steals the note and negotiates by mere delivery to *D*, who is a holder in due course. *D* has an indefeasible title to the notes as against *B*, *C* is bound to pay to *D* and not to *B*. It, therefore, follows that a thief or other person who has obtained possession of a negotiable instrument by an offence or fraud can convey a good title to a holder in due course. It is because of the exceptional incidents which attach to negotiable instruments that there is so much insistence in law that before a document can be considered a negotiable instrument, certain requirements must be fulfilled as regards form, language, etc.

GUIDING PRINCIPLE—The principles applicable to negotiable instruments may now be briefly summarized:

(*a*) A negotiable instrument may be transferred by indorsement or delivery and the transferee or indorsee is able to maintain a suit in his own name on the bill or note.

(*b*) As between immediate parties all pleas and defences which invalidate contract debts can be successfully urged in case of negotiable instruments but they are not available against a holder in due course.

(*c*) A holder in due course takes the instrument free from all defects in the title of prior parties.

POSITION OF TRUE OWNER—The true owner of a stolen bill or note which has reached the hands of a holder in due course, will not be able to obtain payment thereon and will also lose his remedy against prior parties. This is the effect of section 82 (*c*) of the Negotiable Instruments Act which provides that

the maker, acceptor or endorser respectively of a negotiable instrument is discharged from liability thereon to all parties, *if the instrument is payable to* bearer, or has been indorsed in blank and such maker, acceptor, or indorser makes payment in due course of the amount due thereon. This position may be contrasted with that of the owner of a stolen chattel, whose rights will not be affected even if the property comes into the hands of a *bona fide* purchaser for value without notice.

THE EFFECT OF FORGERY—In the foregoing discussion, the effect of forgery has not been considered. In law a forged or unauthorized signature is wholly inoperative and [illegible]ght to retain the bill or note or to enforce payment or to give a discharge therefor can be acquired through and under that signature except in the case of an estoppel. The true owner of a negotiable instrument whose signature is forged is in the same position as the owner of a chattel and can maintain "conversion" against all parties in the same manner as any owner of movable property Where there is no forgery, his rights are lost if the instrument gets into the hands of a holder in due course, but not otherwise.

EXCEPTION OF THE FOREGOING RULE —There is only one exception to the above rule dealing with the effect of forgery, namely, the payment by the banker of a cheque containing a forged endorsement. In the following chapter we shall see that the banker is discharged by payment in due course. The effect of sections 59 and 60 of the English Bills of Exchange Act, 1882 (45 & 46 Vict., c. 61) is that on such payment the drawer as well as the endorsers are also discharged but there is no similar provision in the Indian Negotiable Instruments Act, 1881 (XXVI of 1881). Nevertheless in *Sulleman Hussein* v. *The New Oriental Bank Corporation*, 15 Bombay, 267, Sargent C. J. decided that the drawer and the indorsers would in India be discharged under the circumstances. In considering the doctrine of conversion the principle to be kept in mind, therefore, is that a true owner will be deprived of all his rights if a holder in due course intervenes and there is no forgery or if there is forgery, the instrument is a cheque and payment thereon is made in due course by a banker. In all other cases, his rights are the same as the owner of any movable property.

CHAPTER VI

PAYMENT OF CUSTOMER'S CHEQUES

LIMITATIONS ON BANKER'S DUTY TO HONOUR CUSTOMER'S CHEQUES—The banker's obligation to honour his customer's cheques has already been referred to in Chapter II. This obligation, however, is subject to several limitations. *Firstly*, unless the banker is indemnified, he is not bound to honour any ambiguous instruments, which do not conform to the requirements of the legal definition of a cheque. Instruments which are not intended to operate as cheques may not be honoured by the banker, as that entails certain risks. *Secondly*, this obligation on the part of the banker to honour his customer's cheques, is binding only so long as the state of the customer's account permits their payment. That is to say, either the account which is drawn upon must have sufficient credit balance, or where there is an overdraft arrangement, the amount of the cheque presented does not exceed the drawing limit allowed to the customer, provided, of course, the banker does not choose to exercise the right, which he usually reserves to himself, of reducing or cancelling an overdraft without notice. Other qualifications which limit a banker's duty to honour his customer's cheques will be considered in their context.

THE PAYING BANKER'S RISKS—A banker's position in respect of cheques drawn upon him is not enviable. If he honours a cheque through oversight when there are no funds to the credit of the drawer, he may lose his money; if he dishonours it through inadvertence, he may be called upon to pay damages for wrongful dishonour. He is, as it were, between the devil and the deep sea. A banker must either honour the cheque or refuse its payment at once, without ordinarily, having even a chance to consult his legal adviser, customer or any one else. If with a view to gain time for such a purpose, the banker marks the cheque "present again" and hands it back to the person presenting it, the payee or endorsee has the right to treat it as dishonoured and need not present it again. Moreover, such a remark should not be made when the customer's balance does not allow of the banker's honouring the cheque and there is no likelihood of the customer paying in funds to enable the banker to meet it. It, therefore, behoves a banker to proceed with caution in the matter of honouring or dishonouring the cheques drawn on him. We shall presently see the various precautions which it is incumbent upon a banker to take, in order to safeguard himself against such contingencies; but, before doing so, we should again emphasize the necessity of bankers insisting upon new customers to give references or bring letters of introduction before they are allowed to open accounts, unless, of course, they are previously known to the banker. When this precaution is taken, the risk in honouring cheques is considerably lessened.

Precautions.

OPEN OR CROSSED CHEQUES—The first thing that a banker should do, when a cheque is presented to him for payment at the counter, is to see whether it is an open or a crossed cheque and if crossed, whether it is crossed generally or specially. If the cheque has been crossed generally, the holder should be asked to present it through a banker, and if specially crossed, through the banker to whom it is crossed, or some other bank acting as agent for collection for the banker named. From this, it does not follow that the amount of a crossed cheque can only be credited to the account of the collecting

banker with the paying banker. If, however, a banker honours such a cheque by paying it to a person other than a banker over the counter, the true owner may require the banker to pay him such damages as he might have sustained by the banker's action (Negotiable Instruments Act, 1881 (XXVI of 1881), section 129).

Paying banker and crossed cheques. The duties of the paying banker, as regards crossed cheques, are laid down in sections 126, 127 and 129 of the Negotiable Instruments Act, *supra*, as given below:—

> S. 126. Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.
>
> Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection.
>
> S. 127. Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.
>
> S 129. Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

English law. The English law as regards crossed cheques is contained in section 79 of the Bills of Exchange Act, 1882 (45 & 46 Vict., c. 61), which sets forth as follows, the duties of a paying banker with regard to crossed cheques:—

> (1) Where a cheque is crossed specially to more than one banker, except when crossed to an agent for collection being a banker, the banker on whom it is drawn shall refuse payment thereof.
>
> (2) Where the banker on whom a cheque is drawn which is so crossed nevertheless pays the same, or pays a cheque crossed generally otherwise than to a banker, or if crossed specially otherwise than to the banker to whom it is crossed or his agent for collection being a banker, he is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.
>
> Provided that where a cheque is presented for payment, which does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorised by this Act, the banker paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed or of the crossing having been obliterated or having been added to or altered otherwise than as authorised by this Act and of payment having been made otherwise that to a banker or to the banker to whom the cheque is or was crossed, or to his agent for collection being a banker, as the case may be.

Risks of payment contrary to crossing. From the above, it will be clear that a banker is not justified in paying a cheque in a manner contrary to the directions conveyed by the different kinds of crossings. Firstly, in case he does so and it results in a loss to the drawer, the banker cannot debit his customer's account, as such a payment by the banker is contrary to the instructions of his customer (*Bobbett* v. *Pinkett* (1876) 1 Ex. D. 368, 372). Secondly, he will lose the statutory protection afforded to him by section 128 of the Negotiable Instruments Act, 1881 (XXVI of 1881), as such payment is not a payment in due course, within the meaning of section 10 of the same Act. Thirdly, remedy is given by section 129 of the Act to the true owner against the paying banker who pays the amount of cheque in contravention of the provisions of section 126. In such a case, the banker will make himself liable to compensate the true owner of the cheque to the extent of the loss he may sustain owing to the cheque having been so paid, notwithstanding the fact that there is no privity of contract between the holder of the cheque and the banker

(*Bellamy* v. *Marjoribanks* (1852), 7 Ex. 389). In the case of a crossed cheque which is not presented through a banker, the paying banker should, without bothering himself about its form, return it unpaid with the remark that the same should be presented through a bank.

"Not Negotiable" or "Account Payee" crossings. As already stated, the crossing "Not Negotiable" does not make a cheque non-transferable. A paying banker is therefore not concerned with the question whether or not there has been a valid transfer of the cheque. As regards the crossing "Account Payee" a paying banker is likewise under no duty to satisfy himself whether or not the cheque is being collected for the benefit of the payee's account. Such an addition is not regarded as an unauthorized one (*Akrokeri (Atlantic) Mines, Ltd.* v. *Economic Bank.* (1904), 2 K.B. 472). It is only indirectly recognized as a notice to the collecting banker who will be looked upon as having acted negligently, if he disregards the crossing (*Morrison's case* (1914), 3. K.B. 356, 373; *Sutters* v. *Briggs*, [1921] A.C.I. 12). It is possible that where one of the indorsements happens to be a forged one, the customer might complain that the cheque was not paid in due course. In *Importers Co., Ltd.* v. *Westminster Bank, Ltd.* (1927), 2 K.B. 297 in appeal from (1927), 1 K.B. 269, it was decided that the words "account payee" are a direction to the collecting bank only. It was further held, that if a customer of bank *A* paid in a cheque for collection bearing such a marking and bank A sent it to bank *B* for collection neither the paying bank nor bank *B* would be concerned with the application of the proceeds of the cheque after collection. Bank *A* in such a case would be a "customer" of bank *B* for the purposes of section 82 of the Bills of Exchange Act (section 131 of the Indian Negotiable Instruments Act) and consequently bank *B* would be protected. Sir John Paget has opined that bank *B* could not in such a case claim protection under section 82.

IS THE CHEQUE DRAWN ON THE PARTICULAR OFFICE AT WHICH PRESENTED?—The second point, with regard to which a cheque should be examined, is, whether it is drawn upon the particular branch, or office, of the bank at which it is presented, because no branch or office, other than the one at which the customer has his account, is ordinarily required to meet his cheques. It sometimes happens, however, that when a customer is visiting another city and he applies to his bank to authorize its branch or agent in the place to be visited to cash customer's cheques upto an agreed limit, the bank will have no objection to do so. When such a request is granted a specimen signature of the customer is, of course, sent to the branch or agent concerned. It is, however, doubtful whether the banker can, without informing his customer, earmark the amount for which authority is given to the branch or agent to cash his cheques but a note to that effect should certainly be made on the ledger account of the customer. This will keep the bank on its guard. When arrangement is made for the encashment of a customer's cheques at a branch other than the one where he has his account, the bank is under the same duty and possessed of the same rights as if the cheques were cashed at the office having the account (R. W. Jones: Studies in Practical Banking, p. 251).

MUTILATED CHEQUES—The third point, on which the banker should satisfy himself before honouring a cheque, is to see that it is not mutilated, cancelled or torn. If a banker honours a cheque which is torn by the customer, in such a way as to give sufficient evidence of his intention to cancel it, the former cannot debit the latter's account. In case, however, a cheque is torn accidentally, the drawer must confirm it by writing words such as "accidentally torn by me," and affix his signature thereto. When its payee or holder happens

to tear it by mistake, the banker must either get confirmation from the drawer or ask the payee's banker to guarantee payment. A cheque, torn into two or more pieces, is generally returned with the remark "Mutilated cheque," but cheques, torn at the corners, are generally paid unless it appears that the portion torn off might bear the crossing.

CORRECTNESS OF FORM—The fourth point, about which the banker has to make himself sure, is, that the instrument is drawn in proper form; it is duly dated and fully conforms, when it is presented to him, to the legal definition of a cheque. We have already considered the chief requisites of a cheque. It may be mentioned again, that no difficulty in this connection is likely to arise, if the customer uses the printed forms supplied to him, by his banker. But, if the cheque has been drawn on an ordinary slip of paper, the paying banker should take particular care that it is not a conditional order, as the effect of honouring an instrument containing a conditional order not being a cheque, may result in a loss to him. In case of such orders, the banker must see that the conditions laid down by the drawer is complied with, if he wishes to debit the amount of the instrument to his customer's account. Moreover, the paying banker will be deprived of the statutory protection to which he is otherwise entitled if he pays a conditional order, as the protection given by sections 85 and 128 of the Negotiable Instruments Act, 1881 (XXVI of 1881) can only be claimed in respect of cheques, which, as explained above, are unconditional orders, *vide* pp. 125 and 126, *ante*. In case a banker is asked to honour a conditional order he requires his customer to indemnify him (the banker). In view of the fact that according to the laws of Scotland and a few American states where a cheque is regarded as an assignment of funds once a cheque is presented and returned unpaid for insufficiency of funds, the amount available has to be set aside for the payment of the cheque before any cheque presented later can be honoured.

RISKS IN HONOURING A POST-DATED CHEQUE BEFORE DUE DATE.—The fifth point the banker should remember in connection with the honouring of cheques presented, is, that the cheques must be neither a post-dated, nor a stale one. Should a cheque bear a date later than that on which the holder present it at the bank, the banker should not honour it for the following reasons:

(a) The customer may stop payment, before the due date of the cheque, and, in case the cheque is honoured before that date, the banker may lose his money.

(b) The banker has no right to debit his customer's account with the amount of such a cheque before its due date, and if he does so, he runs a serious risk. For instance, if a customer's cheque for Rs. 500 dated 12 March 1937, but presented on 2 March, 1937, is honoured thus reducing the customer's total credit balance of Rs. 600, to Rs. 100, and, if subsequently, a second cheque, drawn by the same customer for Rs. 300, dated 2 March, 1937, is presented on 3 March, 1937, and is dishonoured, on the ground of insufficiency of funds, the customer will be entitled to claim damages for the wrongful dishonour of his second cheque.

(c) If the banker pays such a cheque before its due date and holds it until it matures, the customer may, in the meantime, become insolvent, insane or die, in which case, the banker would not be entitled to debit the amount to his customer's account.

(*d*) A banker paying such a cheque, will not be entitled to the statutory protection on the ground that such a payment cannot be regarded as having been made in due course. If, however, a cheque, originally post-dated, is presented to the bank on or after its ostensible date, the banker can have no objection to honour it on the ground of its having been originally issued as a post-dated cheque (*Walter Mitchell* v. *A. K. Tennent*, 52 Cal. 677 (682), see also p. 111, *ante*).

STALE CHEQUES—It is also necessary for the paying banker to see that the cheque presented is not stale, or out of date. A cheque is said to be stale when it has been in circulation for an unreasonably long period. What is to be regarded as an unreasonably long period is determined by the nature of the instrument, the usage of trade, the practice prevalent among bankers and the circumstances of the particular case. "It was either a custom of the trade or nothing," per Farewell, L.J. in *Lloyds Bank* v. *Swiss Bankverein*. 29 Times L.R. 219, at p. 222. It is understood that bankers, in India, regard a cheque stale, when it has been in circulation for more than six months. There may be differences in practice in various parts of India. In the case of dividend warrants, however, the issuing companies usually do not honour them if they are presented more than three months after issue, unless they are subsequently revalidated by the companies concerned. Similarly, a stale cheque may also be honoured by the drawee bank, after getting it confirmed by the drawer.

WHERE THE AMOUNT IN WORDS AND FIGURES DIFFERS—As previously stated, the amount payable should be absolutely certain, and, unless the instrument possesses this requisite, it cannot be regarded as a valid cheque. The banker should, therefore, satisfy himself that the amount has not been altered and that, if it has been altered, the alteration is duly supported by his customer's full signature. When the amount stated in words, differs from the amount expressed in figures, a banker, in England, may pay the amount given in words (Bills of Exchange Act, 1882 (45 & 46 Vict., c. 61) s. 9), but the usual practice is that the bankers either offer the smaller amount, or return the cheque with the remark "Amount in words and figures differ." Section 18 of the Negotiable Instruments Act, 1881 (XXVI of 1881) which corresponds to section 9 (2) of the Bills of Exchange Act, *supra*, lays down :

> If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid.

Perhaps the custom of bankers would justify the return of such a cheque, although a banker paying the amount as stated in words, would not run any risk, of being questioned by his customer for making the payment. "The banker," says Lord Haldane L.C. "as a mandatory has a right to insist on having his mandate in a form which does not leave room for misgiving as to what he is called upon to do" (*London Joint Stock Bank* v. *Macmillan* (1918), A.C. 777). Where the amount is given in words only, the banker must pay the same, lest his refusal may render him liable for damages for wrongful dishonour of his customer's cheque. When the amount is stated in figures only, a cheque is generally returned with the remark "Amount required to be stated in words". If the cheque is presented again with the amount filled in by a person other than the drawer, the banker should ask for the drawer's confirmation.

NOT TO PAY OUT OF BANKING HOURS—The banker is required to honour cheques drawn on him, provided they are presented on a working day and during "banking hours." However, bankers are not supposed to suspend

business operation as soon as the clock strikes the closing hour (*Baines* v. *National Provincial Bank* (1927), 32 Com. Cas. 216). Banking hours are fixed by custom and if any change is proposed to be made in the established hours of business, due notice of the change should be given in the press as well as otherwise. As a result of war, banking hours of certain branches of banks in England have been curtailed and as long as adequate notice of the change is given no objection can be taken to the change. Changes in working hours of banks in Bombay and Colombo have also been recently made.

RAISED AMOUNTS. A banker should examine carefully that the amount of the cheque has not been altered. Banks in the U.S.A. and England use ultra violet rays for the detection of forgeries both as regards the amount of cheques as well as the signatures. When the amount of a cheque has been fraudulently raised and the banker, failing to notice the alteration, honours the cheque, the question arises whether or not he may debit his customer's account with the amount paid. In the first place, it is quite clear that if the fraudulent alteration can be detected by the exercise of reasonable care and diligence on the part of the banker, the loss falls on him. It is equally certain that if the drawer intentionally or negligently facilitates the fraudulent raising of the amount, by leaving blank spaces before or after the words and figures expressing the amount, which leads to the banker being defrauded, the customer's account can be debited with the amount paid. However, it is not always easy to decide whether the banker or his customer, should bear the loss in cases where the latter, in drawing the cheques, innocently but carelessly leaves spaces before or after the words specifying the amount, thus facilitating a fraudulent alteration, the banker, failing to detect the alteration, pays the increased amount. For a long time, the decision in *Young* v. *Grote* (1827), 4 Bing. 253 (favourable to the banker) was held to apply, but strong doubts were expressed as to whether this was sound law, especially after the decision in the case of *Colonial Bank of Australasia* v. *Marshall* (1906), A. C. 559. Fortunately for the bankers, the earlier view was re-affirmed by the judgment in the case of *The London Joint Stock Bank* v. *Macmillan and Arthur* (1918), A.C. 777. In this case it was made abundantly clear, that there was an implied term of the contract that the customer in drawing cheques must adopt precautions against forgery. But, it is no part of the customer's obligation to exercise extraordinary care in the drawing thereof. Thus where a blank space was left to the right side of the payee's name (*Slingsby and Others* v. *The District Bank Ltd.* (1931), 2 K.B. 588 and (1932), 1 K.B. 544), the learned judge did not consider the leaving of such space after the payee's name as unusual and held that there was no breach of duty by the drawer to the bank.

THE BASIS OF CUSTOMER'S LIABILITY—The case of *London Joint Stock Bank* v. *Macmillan* must be carefully distinguished from the earlier House of Lord's decision in *Schofield* v. *The Earl of Londesborough*, (1896) A.C. 514. The facts were that a bill for £500 was presented to defendant for acceptance with a stamp of much larger amount than was necessary and with blanks and spaces left before and after the words "five hundred" and the figures £500. The defendant wrote his acceptance and handed the bill to the drawer, who fraudulently filled up the spaces and turned it into a bill for £3,500. A *bona fide* holder for value without notice filed a suit against the defendant for £3,500. It was held that the defendant was not liable for a sum beyond £500 and that his negligence was immaterial as he owed no duty to the plaintiff to adopt precautions against the fraudulent alteration of the bill.

LIABILITY DEPENDENT ON ABSENCE OR PRESENCE OF DUTY—These two decisions of the House of Lords on facts which are apparently indistinguishable,

clearly show that negligence is not the decisive test but the presence or absence of the duty to take care. The necessity of reading an implied term in *Joint Stock Bank* v. *Macmillan* arose because negligence is irrelevant and immaterial unless there is duty; there could be no duty unless there is a term of the contract to take care. If such a term does not exist and if the exigencies of the case or considerations of policy demand it, the only alternative is to imply it which the House of Lords proceeded to do in this case.

CHEQUES WITH MATERIAL ALTERATIONS—Cheques the amounts of which have been palpably altered from larger into smaller sums need not be paid without their confirmation by their drawers. The law affecting material alterations is, that the instrument so altered is avoided except as against the party, who has himself made, authorized or assented to the alteration and the subsequent indorsers thereof (Section 87 of the Negotiable Instruments Act, 1881). Thus where a cheque with an unapparent, but unauthorized material alteration was paid when presented to the bank upon which it was drawn, the protection given by sections 80 and 82 of the Bills of Exchange Act, 1882 (45 & 46 Vict., c. 61), was denied on the ground that the alteration had made the paper a null and void document and therefore no longer a cheque. (Per Scrutton, L.J. in *Slingsby and Others* v. *The District Bank Ltd.* (1931), 2 K.B. 588 and (1932), 1 K.B, 544). The Lord Justice was satisfied that there was no "apparent alteration" of the cheque as originally signed. It is, however, open to doubt whether this finding of Scrutton, L.J. will prevail in India, in view of the wording of section 89 of the Negotiable Instruments Act, 1881 (XXVI of 1881). The District Bank Ltd., in the case referred to above, endeavoured to rely on the proviso to section 79 of the Bills of Exchange Act, 1882, (45 & 46 Vict., c. 61) but that section only referred, in the view of His Lordship, to additions or alterations to the crossing. In India, bankers in this respect occupy a far happier position. Section 89 read with section 10 of the Negotiable Instruments Act, 1881, protects them completely, for payment in due course of materially altered cheques which do not appear to have been so altered, according to the apparent tenor thereof. It follows therefore, that, in order to claim this protection, two conditions must be fulfilled, namely, (1) that the alteration should not be apparent, and (2) that the payment should be a payment in due course, *i.e.*, according to the apparent tenor thereof, in good faith and without negligence. Thus, where a bank paid a cheque altered materially by means of some chemical process, in every particular, save as to the drawer's name the material alteration not being apparent and payment having been made in due course according to the apparent tenor thereof, the bank was held protected, (*Dick Joice* v. *The Bank of India, Ltd.*, S. No. 548/19390 of 1933, Court of Small Causes, Bombay).

COMPUTATION OF BALANCE— It is also necessary for a banker to see that the state of his customer's account is such as will permit the honouring of the cheque presented. We have already seen that it is not necessary for a customer to have a credit balance when his cheque is presented. If he has sufficient credit under the arrangements made for an overdraft, the banker should honour the cheque. The banker need not transfer the credit balance of the customer from one account to another account of his against which the customer's cheque is drawn, although, when he knows that the two current accounts belong to one person in the same capacity, the banker may do so if thereby he can honour his customer's cheque. In that event, he should inform the customer about the transfer. Moreover, except in cases where the banker has expressly or impliedly agreed to treat as cash, cheques paid in by the customer for the credit of his account, he need not take into consideration the amount

of such cheques when ascertaining whether his customer's balance is, or is not, sufficient to meet his cheques. If he has received from his customer certain cheques to be collected and credited to the latter's account and they have not been cleared and appropriated by the time a cheque drawn against them is presented, the banker may return it with a slip bearing the remark "Effects not cleared, present again." The possibility of uncleared items being included in the credit balance must not be overlooked in cases in which bankers are asked to account to third parties such as the Official Assignee in the event of a customer's bankruptcy, the mortgagee or assignee of customer's bank balance or an attaching creditor who has garnished the balance in the hands of the banker. It would appear that a banker would be in order to place such items to suspense account, unless he has agreed to pay them forthwith.

Not to retain any part of balance to meet contingent liabilities. The banker has no right to retain any part of the customer's balance to meet contingent liabilities of his customer. For instance, if he has discounted bills of exchange to which his customer is a party, the banker cannot retain any part of that customer's balance to meet the contingent liability of the latter, in the event of those bills being dishonoured at due dates. However, in the absence of any agreement, express or implied, there appears to be no objection to a banker refusing to pay his customer's cheque if the latter is indebted to him and the debt is due from the customer in the same capacity in which balance to his credit stands.

Not to offer a part of the amount. The banker should neither offer a part payment of the amount of a cheque nor disclose the state of his customer's account. Apparently, a banker incurs liability to his customer in case he discloses the state of the latter's account to one of his creditors, for the purpose of giving him an advantage over his other creditors (Hart's Law of Banking, 3rd edition, p. 221). Under the French law, the payee has the right to demand what balance there is at credit of the account, against which a cheque is drawn as a part payment of his dues in case of insufficiency of the balance. In *Foster* v. *Bank of London* (1862), 3 F. and F. 214, the defendant had disclosed the state of the plaintiff's account to another of their customers, who held a bill which had been accepted by the plaintiff. Thus they enabled the holder of the cheque to pay in the difference between its amount and that of the customer's balance and so to obtain payment of the balance in preference to other creditors. The Chief Justice in the course of his judgment said that the banker could not go further than to say "Not sufficient assets."

Appropriation of payment. In this connection it is, perhaps, desirable to consider the general rule for the appropriation of the amounts paid in by the customer. It is the customer's right to have the amounts which he pays in, credited to such accounts as he likes. If he has two or more accounts, he may specify the account to which the remittance is to be credited. But, if he fails to exercise this right at the time of paying in the amounts, the banker can appropriate the payments at his discretion. When neither the customer gives instructions for the appropriation of the amount paid in, nor the banker makes use of his right to appropriate as he likes, the rule in *Clayton's case* that a payment shall discharge the earliest debt whether of the customer or of the banker then remaining unpaid, applies (*Deeley* v. *Lloyds Bank Limited*, [1912] A.C. 756).

Right of debtor not applicable to payments by instalments. This right of the customer, to assign a payment to the discharge of a particular debt, does not apply where the payment represents one of the instalments payable under a

decree. Thus, in *Harkisondas* v. *Nariman* (1927), 29 Bom. L.R. 953, a decree passed against a judgment-debtor, was required to be discharged in four equal instalments. Paying the first instalment thereof, the judgment-debtor obtained from the court, without the knowledge of the judgment-creditor, official receipt as for the second instalment. Subsequently, he paid two more instalments and obtained receipts for them as for the third and the fourth. The creditor, however, claimed these payments in respect of the first, second and the third instalments respectively. On his suing for the recovery of the fourth, defence was set up that the amounts having already been appropriated respectively towards the second, third and the fourth instalments, the creditor could only claim on account of the first instalment, which had, by that time, become time-barred. The learned judge however, held that a receipt by a Court official, in absence of notice to the creditor, was not binding on him and that "it would be fraud on the judgment-creditor if, without his knowledge the judgment-debtor made payments into court and took receipts for the second, third and the fourth instalments with the intention of defrauding the creditor in respect of the first instalment." The rule in *Clayton's case* that, if a man owed two debts upon two distinct causes and paid the creditor a sum of money the debtor had the right to say to which account the money so paid was to be appropriated, did not apply to this case, as there was only one judgment-debt which was, ordered to be paid in several instalments; it could not be said, therefore, that the debtor owed several debts within the meaning of section 59 of the Indian Contract Act, 1872 so as to enable him to apply the payments to the discharge of any particular debt.

INDORSEMENTS—The next point on which the banker should satisfy himself, is, whether or not the cheque presented to him requires to be indorsed, and if so, whether the indorsements on the same are regular.

Indorsement and identification of holders of bearer cheques. In England, indorsement of a bearer cheque is not insisted upon by the paying banker. In India, however, banks ordinarily require the persons presenting bearer cheques for payment to indorse them. Although not legally bound to sign it, the holder of a bearer cheque generally raises no objection, probably because, if he refused to sign, the paying banker may insist upon having a properly stamped receipt for the amount paid to him. The paying banker can have no justification for asking for the identification of the holder of a bearer cheque, although in case of doubt, especially when the cheque presented for payment across the counter is for a large amount, he (the banker) may ask on the telephone, if possible, for the drawer's confirmation. In case of bearer cheques made payable to corporations presented for payment without any indorsement the paying banker would be well advised to make inquiries before paying them at the counter.

Once a bearer always a bearer. The view that once a bill of exchange is issued as bearer, it remains always a bearer, was held generally in this country also, until in *Forbes, Forbes Campbell & Co.* v. *The Official Assignee of Bombay* (1925), 27 Bom. L.R. 34, Shah, Ag. C.J. and Kincaid, J., held that, where a *hundi* was drawn in favour of a payee or bearer and was endorsed by the payee to a third person, it ceased to be a bearer *hundi* and was payable to the third person or his order. The above ruling so completely upset the ordinary banking practice in India that the Associated Chamber of Commerce of India and Ceylon was compelled to request the Government of India to amend the law so as to restore the *status quo ante*, which had the sanction of English law. To remedy the defect, a bill was introduced in the Legislative Assembly on 2 September, 1929, but it was not considered expedient at the time to interfere with the right of the holder of a bearer negotiable instrument to convert it into an

instrument payable to order. A strong case was made out before many of the provincial banking enquiry committees for the restoration of the previous position and they accordingly made a recommendation for the amendment of the law in which the central banking enquiry committee concurred. This committee, however, added that it was not in favour of interfering with the practice in vogue in regard to *hundis* which were not drawn in the form of cheques, with the result that they could not recommend the extension of the principle, "once a bearer, always a bearer," in the case of all *hundis*. With the passage of the Negotiable Instruments (Amendment) Act, 1934, the principle "once a bearer, always a bearer," has been finally recognized so far as cheques are concerned and the difference between the English and the Indian law, on this point has been removed. The amendment introduced as clause (2) to section 85 of the Negotiable Instruments Act, 1881 reads as follows: —

> Where a cheque is originally expressed to be payable to bearer, the drawee is discharged by payment in due course to the bearer thereof, notwithstanding any endorsement whether in full or in blank appearing thereon and notwithstanding that any such endorsement purports to restrict or exclude further negotiation.

Cheques indorsed in blank. By virtue of section 54 read with section 16 of the Negotiable Instruments Act, 1881 (XXVI of 1881), a negotiable instrument indorsed in blank is payable to the bearer thereof, even though originally payable to order. Where, therefore, a cheque originally drawn to order, becomes payable to bearer by an indorsement in blank, it is not necessary to insist on an indorsement of the instrument to obtain a transfer of the property therein. In the language of Lord Mansfield in *Peacock* v. *Rhodes* (1781), 2 Doug. 633; also see *Jethaparkha* v. *Ramchandra Vithoba*, 16 Bom. 689,695, there is no difference between a note indorsed in blank and one payable to bearer. They go by delivery and possession proves property in both cases. But, where a bill drawn payable to a specified person and others or bearer was crossed, "account payee," it was held that it was not a bill payable to bearer, but only to the payee mentioned (*House Property Co.* v. *London County Westminster Bank* (1915), W.N. 247). Where, however, a cheque bears an indorsement in blank followed by an indorsement in full, it becomes payable to or to the order of the last named indorsee and requires his indorsement before payment.

Indorsement of order cheques. Indorsement of an order cheque is necessary unless the payee himself presents it for payment and even then, although the payee is not bound to indorse it, bankers in India generally require him to do so failing which the payee may be called upon to give a receipt for the amount paid to him and to stamp it when the amount exceeds Rs. 20. Bankers in India generally ask for the identification of the payee or the indorsee of an order cheque who presents it for payment at the counter of the drawee bank.

To see that indorsements are regular. The banker must see that the indorsements on order cheques are regular, otherwise, the payment made may not be regarded as payment in due course. Where an indorsement happens to be in a language, such as Chinese, which the bankers in India are not expected to know, the paying banker can refuse the payment of the cheque, for verification or confirmation, but he should give the reason for postponement in appropriate terms (*Carlisle and Cumberland Bank Case* (1911), 1 K.B. 489).

Conditional indorsements. Where a cheque bears an indorsement making the payment thereof subject to a condition, the position in India appears to be that a banker cannot make payment in respect of it until the condition is fulfilled. This is a difficult position for bankers, for, by its definition, a cheque is an unconditional order payable on demand. It is curious that, while a cheque could thus neither be drawn conditionally, nor the payment thereof

could be otherwise than on demand, the paying banker should be required to see to the fulfilment of the condition given on an indorsement before making the payment. It may be that the condition is binding *inter se* the indorser and the indorsee who cannot demand payment thereof till the condition is fulfilled. But, once a demand has been made on the banker, irrespective of whether the condition was fulfilled or not, what right has the banker to refuse or even withhold payment in respect of an order payable on demand? Perhaps, noticing this inconsistency, express provision has been made in England in section 33 of the Bills of Exchange Act, 1882 (45 & 46 Vict., c. 61) affording protection for payment in disregard of the condition and payment there to the indorsee is valid, whether the condition has been fulfilled or not:—

> Where a bill purports to be indorsed conditionally, the condition may be disregarded by the payer, and payment to the indorsee is valid whether the condition has been fulfilled or not.

There appears to be no corresponding provision in the Negotiable Instruments Act, 1881 with the result that bankers in India occupy the anomalous position noticed above in respect of cheques bearing conditional indorsements and which yet, by the language of sections 6 and 5 of the Act, are unconditional orders drawn on bankers and not expressed to be payable otherwise than on demand.

Indorsements on cheques payable to impersonal, imaginary or fictitious payees. Now, with reference to the question, whether or not cheques made out to impersonal payees such as, "House-keeping or order," "Wages or order" or "Cash or order," should be required to be indorsed, Branson J., held, that, having regard to sections 73 and 3 of the Bills of Exchange Act, 1882, such instruments were not cheques at all, but mere mandates to pay to the bearers thereof. As to the words "or order", the Court held that, as for example, "Cash" could not indorse because it was not a specified person, the Court must neglect the words "or order" and treat the document as a good direction to pay to the bearer. The fact that these documents are now, by the judgment in *North and South Insurance Corporation Ltd.* v. *The National Provincial Bank Ltd.* (1936), 1 K.B. 328, excluded from the category of a bill of exchange is likely to deprive bankers of statutory protection in respect of them. The result is that, while it is desirable in cases of doubt to return them marked "irregularly drawn", it may be expedient to require a duly stamped receipt in respect of payments of such orders, whether the presentation is made by the drawer or the bearer thereof. It is, however, customary to treat cheques made out in the names of fictitious persons as bearer cheques, e.g., cheques payable to "Lord Krishna or order," or "Mother India or order," or "The Arabian Nights or order," or "The Man in the Moon or order" (*Clutton* v. *Attenborough*, [1897] A.C. 90).

Indorsements on cheque payable to public functionaries. It is necessary that bankers should insist on the indorsements on the public functionaries concerned, whatever cheques are drawn in favour of local or other public bodies, whether in respect of cesses, taxes, or otherwise. Thus cheques payable to "The Federal Court of India or order," or "The University of Bombay or order," or "The Nasik Government Treasury or order," will be indorsed by the Chief Justice of the Federal Court or other officer thereof, duly authorized in this behalf, or as in the case of the "University of Bombay or order," by the Vice-Chancellor of the University or the Registrar, if authorized in this behalf and in the case of the "Nasik Government Treasury or order" by the Treasury Officer concerned.

Indorsement by Diverse Persons.

GENERAL PRINCIPLES—We shall now concern ourselves with the general principles governing indorsements, although it has to be admitted, generally, it is very largely the practice of bankers that determines whether or not a form of indorsement is appropriate in any particular case. Although it is desirable that all indorsements should be wholly or partly in ink, an indorsement is legally valid even if it is made in pencil (*Geary* v. *Physic* (1826), 5 B. & C. 234). Bankers, however, usually discourage indorsements in pencil, as a writing in pencil is liable to obliteration as well as alteration. If, however, a pencil indorsement is preceded and followed by indorsements in ink, no objection is ordinarily taken. Indorsements made entirely by means of a rubber stamp provided the impression is made by or under the authority of the payee or endorsee, appear to be permissible. In such cases, the paying banker is entitled to demand satisfactory proof that the stamps were impressed under proper authority. It is, therefore, also desirable to have the impression witnessed by an independent witness. Indorsements in printed characters are not generally accepted though there can be no question as to their validity if they are supported by adequate evidence. It has been held that an indorsement made by a person who has been prohibited by an order of court from so indorseing is not invalid but the paying banker is not affected thereby unless he has notice of the order (*Subramania Iyer* v. *Chockalinga Mudaliar*, 46 Mad. 415).

Complimentary or courtesy titles. The guiding principle is that an indorsement should be in the form of ordinary signature of the payee or indorsee. Complimentary prefixes, suffixes and other courtesy titles do not form parts of indorsements, although in certain foreign countries, courtesy titles are included in indorsements. Therefore words like Mr., Mrs., Miss, Lala, Babu and Esquire, should not precede or follow, as the case may be, the names of the payees or indorsees in their indorsements. Whether the letters "B" and "L." are the abbreviations of the titles "Babu" and "Lala" is a matter entirely to be regulated by local custom. If in the place in which a cheque is drawn, it is the established practice for the titles "Babu and Lala" to be abbreviated into "B. and L." respectively, there should be no obejection in omitting them, otherwise they should be included in the indorsements. However, it is advisable that this practice of using these letters as abbreviations of the terms "Babu" and "Lala" should be discouraged, because sometimes, these abbreviations turn out to be the initial letters of a payee's full name. For instance, if a cheque is made payable to "B. Rama Rau or order," it is open to doubt whether the payee is Babu Ramarau, or, the letter B. stands for Benigal, the first part of his name. An indorsement which includes courtesy title, or form of address, is accepted if the title, or form of address, clearly states that it is merely descriptive. For example, a cheque made payable to Dr. A. B. Cooper, may be indorsed as A. B. Cooper, M. D. and a cheque payable to Sir Ganga Ram, may be indorsed as Ganga Ram (Kt.). It may be added that while the title must not precede the signature of the actual indorser, there is no objection to its appearing in connection with any other name appearing in the indorsement. For example, in an indorsement by a married woman she may use the title Mr. before her husband's name.

Spelling—correct and incorrect. Where the name of the payee, or indorsee, is spelt incorrecty, the spelling of the indorsement must correspond with that of the mis-spelt name. For instance, if a cheque is made payable to "P. S. Aiyar or order," when the correct spelling of the payee's surname is "Iyer," the proper indorsement would be "P. S. Aiyar," but if the payee wishes, he may add his correct name in brackets.

Christian names. Banks in England do not require Christian names to be written in full. It is understood that banks in India do not follow this practice.

Women. In the case of a spinster or unmarried woman the indorsement will consist of her first name and surname. Thus Miss Hirabai Contractor will indorse as Hirabai Contractor. The abbreviation "Miss" before a name is regarded as a term of courtesy as well as a term of description, and consequently differs from the abbreviations "Mr." or "Esq." If, on the other hand, the payee happens to be a married woman, as in the case of a cheque made payable to Mrs. Cecil Jones, she should indorse it by name followed by words showing that she is the wife or widow of Mr. Cecil Jones, as K. Jones, wife or widow of Cecil Jones. In case the payee's name is given as "Mrs. Jones" she should indorse with her usual signature, "Katherine Jones" or "K. Jones," preferably the former. When a cheque is made payable to a married woman in her maiden name, she should indorse the cheque by giving her Christian or first name, followed by her husband's surname, with the word "nee" (=born as, formerly) and her maiden surname. Thus, a cheque made payable to Miss Katherine Jones, now married to Mr. Robinson, should be indorsed Katherine Robinson nee Jones.

Illiterate persons. In the case of illiterate persons, the left hand thumb mark should be impressed and witnessed, and the witness should be required to give his or her address. If, however, a bearer cheque payable to *A*, who is illiterate, is indorsed in favour of *B* with *A*'s thumb impression, and *B* happens to be known to the paying banker, it is not necessary to verify the thumb impression of *A*, as the cheque is payable to bearer.

Firms. In the case of an ordinary partnership firm where the indorsement is in the name of the firm, for instance, Desai Vakil & Co., it will be regarded as a valid indorsement of a cheque made out in that name but it is suggested that if the name of the firm happened to be Desai Vakil Trading Co., the cheque should be indorsed "For Desai Vakil Trading Co., T. Desai, proprietor, partner, or manager."

Joint payees. Cheques made payable to two or more payees, not being in partnership, must be indorsed by each of them individually. Thus a cheque payable to "Mr. A. K. Desai and Mr. R. C. Dalal" or "Messrs. A. K. Desai and R. C. Dalal" should be indorsed by both the payees. The banker will be justified in returning for confirmation, a cheque on which both the indorsements appear to be written by the same hand, or unless one of them has died and the banker has notice of his death or unless one of them is authorized to sign on behalf of all, and the banker is apprised of the authority thus given.

Clubs, Associations, etc. When the cheque is made payable to a club, association or other institution, the name of the payee is generally followed by the name and designation of the office bearer indorsing the instrument on behalf of the payee, as the mere signature of the person is no indication of the representative capacity in which he receives payment. If the instrument is made payable to the holders of an office without specifying their names as, for example to, "The Honorary Secretaries, the Sydenham College Students' Association," the indorsement must include not only the signatures of the persons holding the position but they should be followed by also their designation. If, on the other hand, the cheque is made payable to him personally, although the money is intended for the club or institution, it is enough if he indorses it with his name only.

Companies. The mere writing or impressing of the name of the company by a person acting under its authority constitutes a valid indorsement, but bankers do not accept such indorsements as good discharge, unless they are confirmed, or unless the authority and the capacity of the person signing the instrument is clearly indicated. Ordinarily, there are holders of certain offices in a company who are in a position to bind the company. For instance, bankers accept indorsements made by directors, managers, and secretaries of companies, but not those of cashiers, accountants and ledger clerks. For a valid discharge, an indorsement on behalf of a company should correspond as in other cases exactly with the name of the company, as given on the cheque or bill, and when the name given is inaccurate, the indorsement should correspond to the inaccurate name.

Cheques with per pro. indorsements. There is no legal compulsion on a banker to accept an indorsement with the words "per pro." (per procuration) without confirmation. The signatory to per pro. indorsement must give his full ordinary signature. A paying banker is considered to run no risk if he pays a cheque purporting to be indorsed by a duly authorized agent of the payee, and he will not be liable if it turns out that the person so indorsing had gone beyond his authority. In England, dividend warrants are not paid on per pro. indorsements. Such indorsements are generally accepted in India when dividend warrants, not being in the form of cheques, are drawn payable to more than one payee and indorsement by any one of them is considered sufficient; the payee so indorsing has to give his full name as given in the body of warrant.

Public authorities or corporations. In the case of cheques in the names of public authorities and corporations such as port trusts, improvement trusts and municipalities, the indorsements should be for the respective body and the indorser should add his or her designation. When a cheque is payable to the order of a particular officer such as assessor or president of Nasik municipality, the cheque indorsed as, T. K. Desai, assessor or president of Nasik municipality, is considered to be in order.

Cheques indorsed A. B. per X. In the recent case of *Slingsby and Others* v. *The District Bank Limited* 1931, 2 K.B. 588 (1932), 1 K.B. 544, already referred to, where a cheque was drawn A B. per X, and the evidence, based on banking practice was that such cheques were indorsed not A.B. per X, but simply X. it was held, that this practice could not obtain legal sanction. In such a case, in the language of Mr. Justice Wright, X could only sign as authorized by A.B. and if he had the authority of A.B., and could only sign in a representative capacity; his indorsement ought on principle to make that clear. The learned judge went on to observe that, "it might be that the practice which the defendant's witnesses said had been followed was convenient and save trouble but in his judgment it could not be justified in law."

Indorsement of cheques payable to deceased persons. Cheques made payable to deceased persons must be indorsed by their legal representatives. As executors can delegate their authority, there is no objection if only one of them signs. He must, however, indicate that he is an *executor* and that he signs on behalf of himself and his co-executor or co-executors. Although authority to sign may be given to one executor by his co-executors, it cannot be placed in the hands of an outside person. All trustees must sign, while any executor can indorse.

To further elucidate the principles stated above, we give below specimens of various indorsements, regular and irregular.

Regular and Irregular Indorsements

Payees.	Irregular Indorsements.	Regular Indorsements.	General Remarks.
Individuals—			
Hiralal	Hiralal	Hiralal Shroff	Hiralal is an ordinary individual's name among the Hindus. In order to facilitate identification, his surname or other name should be added* though it would not be necessary in Upper India where people generally have no surnames.
Mr. H. Jones, Junior	H. Jones	H. Jones, Junior.	
Lala Panna Lal	Lala Panna Lal	Panna Lal	Lala is a courtesy title.
	P. Lal	Panna Lal	Full signature has to be given.
Mr. David Cooper	Mr. David Cooper	D. Cooper	This is permissible in the case of Christians only.
	David Cooper, Junior	David Cooper	Mr. David Cooper is *prima facie* David Cooper Senior.
Principal Naidu	Principal Naidu	R. Naidu.	
Prof. M. G. Singh, Govt. College, Lahore.	Professor M. G. Singh or Pro. M. G. Singh, Govt College, Lahore.	M. G. Singh, Govt. College, Lahore.	
Sir Jinda Ram	Sir Jinda Ram	Jinda Ram (Kt.) by his constituted attorney R. K. Bhalla	Before paying the cheque, the banker should satisfy himself, whether R. K. Bhalla, is, in fact, the constituted attorney of the payee.

* The Journal of Indian Institute of Bankers, July 1930, p. 62.

Regular and Irregular Indorsements—(Contd.)

Payees.	Irregular Indorsements.	Regular Indorsements.	General Remarks.
Individuals—(contd.)			
Dr. Ram Nath	Dr. Ram Nath	Ram Nath	He may add M.D. or M.B.B.S. after his name.
Ganga Prasad		Received satisfaction. Ganga Prasad	An unusual indorsement. All the same, it is in order.
M. J. Dubash per R. J. Modi.	R. J. Modi	M. J. Dubash per R. J. Modi.	The indorsement should in general correspond with the description of the payee *per* Mr. Justice Wright*.
Women :—			
Miss Kapur	Miss Kapur	Kamla Kapur.	
Mrs. Desai	Mrs. Desai	Prem Desai (Wife or widow of Mr. H. Desai).	
		(Mrs.) Prem Desai	This is also accepted.
Mrs. H. Desai	Mrs. H. Desai	Lilavati Desai. (Mrs. H. Desai).	
Mrs. Captain Batra	Mrs. Batra	Ram Batra Wife of Captain Batra.	
Miss K. Desai (now married)	Mrs. K. Desai	K. Dewan (*nee* Desai).	
Clubs, Schools, etc. :—			
D. A. V. School	Harimal Handa, Head Master D. A. V. School.†	For and on behalf of the D. A. V. School, Harimal Handa, Head Master.	

* *Slingsby and Others* v. *The District Bank, Ld.* (1931), 2 K.B. 588; (1932) 1 K.B. 544. † This is also accepted sometimes.

Regular and Irregular Indorsements—(Contd.)

Payees.	Irregular Indorsements.	Regular Indorsements.	General Remarks.
Clubs, Schools—*(contd.)*			
Head Master, New High School.	New High School Head Master.	R. Murzban, Head Master, New High School.	
The Punjab Club	T. R. Khanna, Secretary, The Punjab Club.	For and on behalf of the Punjab Club, T. R. Khanna, Hony. Treasurer.	
The Secretary, The Punjab Club.	S. R. Rallan, Secretary. ..	For and on behalf of the Punjab Club, S. R. Rallan, Secretary.	
Harrington Chambers ..	T. Talmaki, Manager, Harrington Chambers.	For and on behalf of the Harrington Chambers, T. L. Talmaki, Manager.	
Hony. Treasurer, Orient Club.	Hony. Treasurer, Orient Club.	For and on behalf of the Orient Club, T. C. Sen, Hony. Treasurer.	An indorsement T. C. Sen, Hony. Treasurer, Orient Club, also is generally accepted.
Joint Payees :—			
Messrs. Hiralal Desai and Jal Modi.	Hiralal Desai .. .. Jal Modi .. .. .. In the same handwriting.	Hiralal Desai .. .. Jal Modi.	In different handwritings.
A. B. C. D1.	B. C. D.	A. B. C. or A. B. D. or A. C. D.	See footnote.

1 The bank is instructed to accept signatures of any three of the four joint owners of the account both as regards cheques to be drawn on the account as well as for the purpose of indorsement of cheques payable to them jointly. Later the bank is informed by A that no instrument should be accepted on behalf of the joint account unless it bears his signature.

Regular and Irregular Indorsements—(Contd.)

Payees.	Irregular Indorsement.	Regular Indorsement.	General Remarks.
Joint Payees—(contd.)			
Hiralal Desai & Mrs. Desai	Hiralal and Mrs. Desai ..	Hiralal Desai. Lilavati Desai. For self and Mrs. Desai Hiralal Desai.	In different handwriting Authority may be presumed
Agents :—			
Thomas Roberts	For Thomas Roberts, J. Brown.	For and on behalf of Thomas Roberts. J. Brown.	For or pro. is no indication of authority.
	Thomas Roberts per pro. J. Brown.	Per pro. Mr. Thomas Roberts J. Brown.	Per pro. must precede the principal's name.
	Per pro. Thomas Roberts, Captain J. Brown	Thomas Roberts by or per, his constituted attorney J. Brown.	An agent cannot usually delegate his authority to sign on behalf of his principal to a third person. Indorsements which indicate such a delegation should be returned for confirmation or for the signature of the agent himself. There is no objection to titles or words of courtesy appearing in connection with the name of the principal as in that case the indorsement is to be made by his agent.

Regular and Irregular Indorsements—(Contd.)

Payees.	Irregular Indorsements.	Regular Indorsements.	General Remarks.
Firms:—			
Smith & Co.	John Smith & Co.	Smith & Co.	Any partner who has authority to sign on behalf of the firm may sign in the name of the firm.
	John Smith	Smith & Co. John Smith. Partner.	The endorsement should indicate the designation of the person making it.
		Per pro Smith & Co. John Smith. Partner.	
Barring Bros.	A. & B. Barring	Barring Bros.	
		Per pro Barring Bros. A. Barring. Partner.	
Chopra Sons	B. N. Chopra Sons	Chopra Sons.	
Messrs. Khanna	Khanna & Co.	Khanna & Khanna. Khanna & Son.	The description of the payee suggests that the payee named is a firm consisting of at least two persons named Khanna and should therefore be indorsed in one of the forms given in the preceding column.
	T. Khanna & Co	T. H. Khanna & Sons. Khannas.	
Messrs. K. L. Chopra	K. L. Chopra	K. L. & K. L. Chopra.	

Regular and Irregular Indorsements—(Contd.)

Payees.	Irregular Indorsements.	Regular Indorsements.	General Remarks.
Firms—(*contd.*)			
Misses Smith	Misses Smith	Smith Sisters.	
Messrs. Puri & Mehta ..	J. Puri	Puri & Mehta.	
The General Stores & Agency		For and on behalf of the General Stores & Agency B. Raj, Proprietor or per pro. the General Stores & Agency B. Raj, Partner.	
Joint Stock Companies:—			
Sharma Trading Co., Ltd. ..	For Sharma Trading Co., Ltd. Daya Ram.	Per pro. Sharma Trading Co., Ltd. or for Sharma Trading Co., Ltd., or for and on behalf of Sharma Trading Co., Ltd., or Sharma Trading Co., Ltd., Jagdish Sethi & Co., Managing Agents.	According to Sir John Paget the banker cannot disregard the intimation that the person signing does not hold a position consistent with having authority to indorse.

Regular and Irregular Indorsements—(Contd.)

Payees.	Irregular Indorsements.	Regular Indorsements.	General Remarks.
Joint Stock Companies:— (*contd.*)			
B. D. & Co., Ltd. (in liquidation).		For and on behalf of B. D. & Co., Ltd. (in liquidation). Daya Ram, Liquidator.	
The Eastern India Life Assurance Co., Ltd.	M. J. Mistry & Co., Managers	For and on behalf of the Eastern India Life Assurance Co., Ltd. M. J. Mistry & Co., Managing Agents.	
The Sialkot Railway Co., Ltd.	The Sialkot Railway Co., Ltd.	For and on behalf of the Sialkot Railway Co., Ltd. John Brown & Co., Ltd., Managing Agents. H. G. Procter, Director.	

Regular and Irregular Indorsements—(Contd.)

Payees.	Irregular Indorsements.	Regular Indorsements.	General Remarks.
Executors and Administrators:—			
K. Karanjia (now deceased)	Dinbai Karanjia, widow of K. Karanjia.	S. Behramji R. Keshwala. Executors of the late K. Karanjia.	Executors have implied power to delegate their authority to one or some of their numbers.
	S. Behramji	For self and Co-executor of the late K. Karanjia, S. Behramji.	
S. Behramji and another, executors of the late K. Karanjia.	For Executors of K. Karanjia deceased, S. Behramji, For self and Co-executor S. Behramji.	For the Executors of the late K. Karanjia, S. Behramji, Executor For self and Co-executor or administrator of K. Karanji deceased, S. Behramji.	No objection can, therefore, be taken to the indorsement of cheques by one executor, provided he indicates that he is an executor and that he signs on behalf of himself and his co-executors.
Representatives of the late K. Karanjia.	S. Behramji	For self and Co-executor of the late K. Karanjia, S. Behramji.	Capacity of the person signing as executor must be indicated.
Trustees:—			
The Trustees of the late Sir Vithaldas Damodar Ratansey.	For self and Co-trustees of the late Sir Vithaldas Damodar Ratansey, H. Desai.	H. Desai L. Pattack Trustees of the late Sir Vithaldas Damodar Ratansey.	One trustee cannot sign for all.

Regular and Irregular Indorsements—(Contd.)

Payees	Irregular Indorsements.	Regular Indorsements.	General Remarks.
Trustees—(*contd.*)			
H. Desai & L. Pattack, Trustees of the late Sir Vithaldas Damodar Ratansey.	H. Desai .. .. .. L. Pattack	H. Desai } Trustees of the late Sir Vithaldas Damodar Ratansey. L. Pattack.	Signatures must indicate the capacity in which the signatures are made.
Trustee of the late Sir Vithaldas Damodar Ratansey.	Per pro. trustee of the late Sir Vithaldas Damodar Ratansey, H. Desai.	H. Desai, sole trustee of the late Sir Vithaldas Damodar Ratansey.	A trustee cannot delegate his powers, unless expressly provided for in the terms of the trust.
Official Payees:—			
Official Receiver of K. L. Sharma & Co.	Per pro. H. Desai, Official Receiver of K. L. Sharma & Co., B Ram.	H Desai, Official Receiver of K. L. Sharma & Co.	
The Collector of Taxes ..	Per pro. R. Smyth, Collector of Taxes, T. S. James[1]	R. Smith, Collector of Taxes.	It is necessary to give the official description or designation.
Mayor of Karachi	For Karachi Corporation, M. Adnani, Mayor	M. Adnani, Mayor of Karachi.	
Illiterate Persons:—			
Nurdin	Lalahim	Nurdin's thumb mark (X). Witness, K. M. Shah, Dentist, 125 Esplanade Road, Bombay.	The witness should be an independent party known both to the illiterate party and to the paying banker and must give his name, occupation and address clearly.

[1]Requires official confirmation.

Regular and Irregular Indorsements—(Contd.)

Payees	Irregular Indorsement	Regular Indorsement	General Remarks
Miscellaneous:—			
H. Desai or bearer			Requires no indorsement. See Sec. 85(2) of the Negotiable Instruments Act, 1881 (as amended by Act XVII of 1934)
Bearer, my wife .. .. (Signed by Cecil Jones)	Katherine	Katherine Jones, Mr. Cecil Jones.	Requires indorsement of the drawer's wife.
Self or order			Requires indorsement of the drawer.
Impersonal or Fictitious Payees:—			
Income-Tax or order .. .. Indian Weekly Notes	Indian Weekly Notes	Indian Weekly Notes, R. N. Das, proprietor.	Requires indorsement of the Income-Tax Officer.

SOME TYPICAL ILLUSTRATIONS REGARDING INDORSEMENTS—The following illustrations of cheques drawn in favour of anomalous payees or cheques drawn ambiguously with our comments thereon, would, it is hoped, prove helpful to those whose business it is to collect or pay cheques.

Cheque drawn payable to	Remarks.
Narsing Mehta	Payable to order, and must bear the payee's indorsement.
Narsinh Mehta only	(1) Should be indorsed by Narsinh Mehta, whose indorsement should be confirmed by the collecting banker. (2) Identification must be insisted on, if presented in person.
Bearer (Mrs. Mehta) or order	Mrs. Mehta's discharge is essential.
Bearer (my wife) or order	Same as above.
Bearer or order	As the payee is not specified, the cheque should be returned as irregularly drawn.
Shashikant Shah or order of Ramakant Parikh	Valid discharge can be given by either of these
Self or order	May be cashed in person by the drawer. If not, indorsement is necessary.
Shashikant Shah or order	Shashikant Shah's indorsement is necessary.
Shashikant Shah in full settlement ..	"Shashikant Shah in part payment" would be irregular. In England a banker paying the cheque will not incur any liability although in the interests of his customer he is not likely to honour the cheque.
M. V. "Victoria" or order	Must be indorsed by the Captain or some other responsible authority, or officer on behalf of the motor vessel named. In case of cheques for large amounts the local agent of the company owning the steamer may be asked to indorse the cheque.
Robinson Crusoe	Requires no indorsement. As the payee is a fictitious person, the cheque is payable to bearer.

FORGED INDORSEMENTS—Let us now consider the position of the paying banker in connection with cheques bearing forged indorsements. As will be explained later the banker cannot debit his customer's account with the amount of the cheque on which the latter's signature has been forged, as in that case, it will not constitute a genuine order from his customer. The banker can protect himself against the risk, by comparing the signature on the cheque with the specimen signature supplied to him by his customer. Although, it is true, that the banker is required to pay the cheques drawn by his customer according to their apparent tenor, he cannot be expected to know the signatures of the payees and the indorsees of different cheques; it is for this reason that the law protects the paying banker in case of forged indorsements.

GUARANTEED INDORSEMENTS—Sometimes a cheque paid in for the credit of a respectable customer is illegibly or a little irregularly indorsed by the previous indorser. In such cases, bankers usually do not object to the defective indorsement *if it is guaranteed by the customer*. Banks also sometimes certify or guarantee such indorsements. Cheques are sometimes paid without the indorsement if the presenting banker guarantees that the amount of the cheque is being credited to the payee's or indorsee's account as the case may be.

ORIGIN OF THE STATUTORY PROTECTION GIVEN TO THE PAYING BANKER—Until 1853, cheques, payable to order on demand, were very seldom used in England, as they were subject to the same stamp duty as ordinary bills of exchange. The Stamp Act, 1853, (16 & 17 Vict., c. 59), reduced the duty on such cheques to one penny, but further prescribed that any draft or order *drawn upon a banker for a sum of money payable to order* on demand which shall, when presented for payment, purport to be indorsed by the person to whom the same shall be payable, shall be a sufficient authority to such banker to pay the amount of such draft or order to the bearer thereof, and it shall not be incumbent upon such banker to prove that such indorsement or any subsequent indorsement was made by, or under the direction or authority of, the person to whom the said draft or order was or is made payable either by the drawer or indorser thereof. Section 60 of the Bills of Exchange Act, 1882 (45 & 46 Vict., c. 61), lays down,

> When a bill payable to order on demand is drawn on a banker and the banker on whom it is drawn pays the bill in good faith and in the ordinary course of business, it is not incumbent on the banker to show that the indorsement of the payee or any subsequent indorsement was made by, or under the authority of the person whose indorsement it purports to be and the banker is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority.

So far as cheques are concerned section 19 of the Stamp Act is to be regarded as having been repealed (*Worshipful Company of Carpenters of the City of London* v. *British Mutual Banking Co., Ltd.* (1938), 1. K. B. 511).

STATUTORY PROTECTION UNDER THE INDIAN LAW EXPLAINED—Similarly, section 85 of the Negotiable Instruments Act, 1881 renumbered as (1) thereof by the Amendment Act of 1934, lays down

> Where a cheque payable to order purports to be endorsed by or on behalf of the payee, the drawee is discharged by payment in due course.

It was contended by some writers on the subject that, although the object of the framers of this Act was probably to grant to bankers in India the same amount of protection as given under section 19 of the English Stamp Act, 1853 (16 & 17 Vict., c. 59), section 85 of the Negotiable Instruments Act, 1881, failed to achieve that object. While section 19 of the English Stamp Act and section 60 of the Bills of Exchange Act, 1882, made it clear that in England the paying banker was protected, whether the forged indorsement was that of the payee or of any subsequent indorsee, it was said that section 85 of the Negotiable Instruments Act, 1881, seemed to protect the banker only in cases where the forged indorsement was that of the payee and not that of the subsequent indorsee. It was only in 1914, that clause (2) to section 16, was added to the Negotiable Instruments Act, 1881, extending the protection to the paying banker in respect also of cases of forgery of any subsequent indorsement, as the paying banker cannot be ordinarily expected to know the signatures of indorsees of different cheques; see *Jagjivandas* v. *The Nagar Central Bank*, 50, Bom. 118, where an argument that such an extension was not meant by the Amending Act of 1914 was definitely overruled.

Payment in Due Course.

MAIN REQUIREMENTS—As the paying banker can claim the protection afforded to him only when he pays a cheque drawn on him in due course, it is necessary to consider the meaning of "payment in due course". Section 10 of the Negotiable Instruments Act, 1881 defines the term thus :—

> "Payment in due course" means payment in accordance with the apparent tenor of the instrument, in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

Thus, the main requisites of payment in due course are :

(1) that the payment should be made in accordance with the apparent tenor of the instrument, that is, in accordance with the intention of the parties as it appears on the face of the instrument ;

(2) that such payment should be made in good faith and without negligence ; and

(3) the person to whom such payment is made should be in possession of the instrument under circumstances which do not offer a reasonable ground for believing that such person is not entitled to receive the amount thereof.

PAYMENT ON MATURITY—By the first requisite, it is clear that the payment should be made, on maturity, to the person who is entitled to give complete discharge in respect of the cheque. Hence, payment of a post-dated cheque, cannot be regarded as payment in due course. If the paying banker honours a post-dated cheque before its ostensible date, he will not be entitled to the statutory protection should the indorsement of the payee transpire to have been forged ; on the other hand, he may become liable to pay damages, as explained earlier in the chapter.

IN GOOD FAITH AND WITHOUT NEGLIGENCE—As regards the second requisite, we have throughout this book taken for granted that the banks act in good faith, and, therefore, we need not offer any comment upon this requisite. The Indian law, as stated above, will exclude a payment made negligently from the category of payment in due course, but, it is not so under the English law. As an illustration of negligence it may be stated that, if the paying bank fails to see whether or not all the indorsements are regular, it will be deprived of the statutory protection. Similarly, in case of *per pro.* indorsement, if the paying banker does not satisfy himself whether a person signing *per pro.* has any authority or not, the payment will not be regarded as payment in due course.

PERSON IN POSSESSION OF THE INSTRUMENT—The third requirement is that the person to whom payment is made, should not only be in possession of the instrument, but further there should be no such circumstances connected with his possession as afford a reasonable ground for believing that he is not legally entitled to receive payment of the amount mentioned in the instrument. Possession of a cheque, for instance, the payment of which has been stopped by the drawer, is not such possession as complies with this requirement of "payment in due course". The fact that the payment has been stopped, is a ground for believing that the possessor is not entitled to receive payment of the cheque, in spite of his possession.

The banker, who pays such a cheque, cannot claim the protection of section 85 of the Negotiable Instruments Act, 1881.

PROTECTION IN CASE OF CROSSED CHEQUE—In the case of crossed cheques, section 128 of the Negotiable Instruments Act, 1881 amplifies the protection given to the paying banker by section 85 of that Act. Section 128 provides:—

> Where the banker on whom a crossed cheque is drawn has paid the same in due course, the banker paying the cheque, and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects as they would respectively be entitled to and placed in if the amount of the cheque had been paid to and received by the true owner thereof.

As will be seen from the wording of this section, protection is given also to the drawer of the cheque, if it has come into the possession of the payee.

PROTECTION FOR DRAFTS DRAWN BY ONE OFFICE OF A BANK ON ANOTHER OF THE SAME BANK—As previously stated at p. 108, *ante*, drafts drawn by one office of a bank on another office of the same bank, were not in all cases regarded as cheques, although they are analogous to cheques and are handled likewise in the ordinary course of business. Consequently, the paying banker was not sure of the protection, in the case of drafts till the Negotiable Instruments (Amendment) Act, 1930 was passed. The amendment to section 85A of the Negotiable Instruments Act, 1881 provides that,

> Where any draft, that is, an order to pay money, drawn by one office of a bank upon another office of the same bank for a sum of money payable to order on demand, purports to be indorsed by or on behalf of the payee, the bank is discharged by payment in due course.

However, when the paying banker also acts as the collecting banker he cannot claim the protection which would be denied to the collecting banker on the ground of negligence (*Carpenters Company* v. *British Mutual Banking Company*, Journal of the Indian Institute of Bankers, January, 1938, p. 55).

CUSTOMER'S SIGNATURE—Lastly, having satisfied himself on the points stated above, the paying banker must see that the cheque is really an order of his customer, since he is only bound to pay his customer's money with his authority. He should make himself sure on two points: (1) whether the cheque purports to bear the signature which the banker has been instructed to honour, namely, that of his customer, or of the customer's agent duly authorized in his behalf; and (2) whether the signature on the cheque is genuine? In the case of joint accounts, in the absence of clear instructions from each of the parties concerned, the banker should safeguard himself by insisting upon the cheque being signed by all the parties to a joint account. The same rule applies to cheques drawn against a joint account in the names of husband and wife, unless the banker is authorised to honour cheques signed by either of them.

THE CHEQUE SHOULD PURPORT TO BEAR THE SIGNATURE, THE BANKER IS INSTRUCTED TO HONOUR—No difficulty in this matter arises, provided the banker follows his customer's instructions, but his failure to do so is likely to land him in difficulties. Let us take, for instance, the case where an account is opened in the name of a firm consisting of two partners, with instructions that cheques to be drawn on the firm's account must bear the signature of one partner and the initials of the other. In such a case, the banker who honours a cheque drawn by one partner but without the initials of the other, is liable to the second partner for the amount of the cheque.

CHEQUE MAY BE SIGNED BY A PERSON AUTHORIZED TO DO SO—For a cheque to be valid, it is not always necessary that the drawer should sign it with his own hands. It is sufficient if the customer's signatures are written thereon by another person authorized by him to do so, provided that the banker has been provided with a specimen signature of the person so authorized. Nor must a signature necessarily appear at the foot of the cheque. It may appear in any part of it, provided the intention of ordering the payment is made clear. Mr. Hart is of opinion that the following form is quite in order: "I, John Styles, order you to pay......"

THE CUSTOMER AND FORGED SIGNATURE—As regards the second point, it should be noted that a banker is bound to know the signature of his customer and his authorized agent, if any. The banker is supposed to have specimen signatures of all persons authorized to draw on him, so that he can compare the signature on the cheque with the specimen supplied to him. Should he come to the conclusion that the drawer's signature on a cheque differs from the specimen signature supplied to him, he should not honour it. In case, however, the signature is forged cleverly and he fails to detect the forgery, he cannot debit his customer's account with the amount of the cheque, as he has no legal authority from his customer to part with his funds (*Bhagwandas* v. *Creet* (1904), I.L.R. 31 Cal. 249). This is not a question of mere negligence—the signature may have been forged so cleverly that it could not be detected. But, if by his conduct the customer causes the banker to believe the signature to be genuine, the banker will be entitled to debit the account of the former with the amount of the cheque paid. Thus, supposing a cheque, purporting to be drawn by Mr. X, is presented at the bank when he happens to be in the bank's office and the ledger clerk, having a doubt about the genuineness of the drawer's signature on the cheque, shows it to Mr. X and passes it on Mr. X's assurance that the signature is genuine, the paying banker cannot be held responsible for any negligence in having honoured the cheque on such assurance. Mr. X is thereby precluded from denying afterwards the genuineness of his signature, and disputing the banker's right to debit his account with the amount of the cheque so paid. This is so, even if it is doubtful whether negligence on the part of the customer, prior to the presentation of the cheque, would preclude his repudiating the instrument on the ground of the forged signature. In order to give the readers an idea of the judicial tendency in such cases, we cite two cases on the point:—

REPOSING CONFIDENCE IN A PERSON PREVIOUSLY CONVICTED OF FORGERY, NO BAR TO ACTION AGAINST BANKER—In *Lewes Sanitary Laundry Co., Ltd.* v. *Barclay Bevan & Co.* (1906), 11 Com. Cas. 255, the directors of a steam laundry, three in number, appointed the chairman's son as secretary to the company. They were aware that he had committed forgery four years previously, although thereafter he had apparently lived a straight life. Reposing confidence in him, the directors allowed him to keep the cheque book of the company in his custody. The secretary forged the signature of one of the directors on a number of cheques, purporting to be drawn on behalf of the company, and obtained payment thereof from the company's bankers. Mr. Justice Kennedy held, that the bank could not debit the company's account with the amount of those forged cheques, as there was no negligence shown on the part of the company to preclude it from recovering from the bank the amount of the cheques so paid.

In *Kepitigalla Rubber Estates Ltd.* v. *National Bank of India, Ltd.* (1909), 2 K.B. 1010, the signature of the two directors of a company were forged by the company's secretary on a number of cheques. Those cheques were paid from the company's account. The said forgeries covered a period of over two months, during which the directors had not examined the company's pass book. It was held that the company was entitled to recover the amount of those forged cheques from the bank.

CUSTOMER'S SUBSEQUENT NEGLIGENCE—Just as it is the duty of the banker to report to his customer if a cheque is presented to him and dishonoured on the ground of the forgery of the drawer's signature, the customer has the corresponding duty to inform his banker if the former comes to know that forged cheques are being presented. If he fails to inform the banker until such time as the latter's chances of recovery from the forger have been materially prejudiced, the customer will be precluded from disputing the genuineness of the signature and claiming the amount from the bank (*M'Kenzie* v. *British Linnen Co.* (1881), 6 A.C. 82).

Greenwood v. *Martins' Bank.* In *Greenwood* v. *Martins Bank Ltd.*, [1933] A.C. 51, Lord Tomlin, delivering the judgment of the House of Lords, observed, "mere silence could not amount to representation, but when there was a duty to disclose, deliberate silence might become significant and amount to a representation." The facts of the case were, that one Mr. Greenwood had an account with a branch of the defendant bank. Somehow his wife acquired his cheque book and forged as many as forty-four cheques. On Greenwood's discovering the fact, she appealed to him not to inform the bank, as he was certain to get back his money at the end of a certain litigation for which she had used the money in aid of her sister. Being reluctant, "to give his wife away", and taking her upon her word, he refrained from informing the bank. Ultimately, however, when the plaintiff's wife asked him for more money, he refused her request, and threatened her that he was going to report the matter to the bank, which led her to commit suicide. Subsequently, when he filed a suit against the bank, he relied on a contemporary decision which laid down, that a banker was *prima facie* liable to a customer, if he paid away the customer's money on a forged cheque. Soon afterwards, however, it was decided that the customer also owed a corresponding duty to the bank, to use reasonable care in the drawing of cheques, and if he, through his negligence, facilitated the perpetration of a forgery, he might be deprived of his remedy against the bank. On the other hand, the bank also cannot rely on the customer's delay, in cases where the bank itself has been guilty of negligence, which has, in its turn, contributed to the loss. In this case however, the plaintiff was held to be estopped by his conduct from making any claim against the bank, the estoppel being grounded on his silence and inaction when there was a duty to speak.

CUSTOMER'S DUTY IN CASE OF BEING INFORMED OF FORGERY BY A BANK OFFICIAL—If the customer learns of the forgery through an accredited agent of the bank, who asks the customer to maintain silence in the interest of the bank and the customer complies, in the belief that the agent is acting honestly in making this request, he will not be guilty of any negligence. On the other hand, if the request made by an officer of the bank to the customer was such as would create in the mind of a person of

ordinary intelligence, a suspicion as to its genuineness, the customer should report the matter, forthwith to the directors of the bank (*Ogilvie* v. *West Australian Mortgage and Agency Corporation*, [1896] App. Cas. 257).

FORGERY OF CUSTOMER'S SIGNATURES ON REQUISITION SLIPS—To guard against possible forgeries, some of the banks issue requisition slips, duly numbered, so as to indicate the name of the customer to whom the cheque book containing the requisition slip has been issued. If the requisition slip is stolen and the customer's signature is forged thereon by an ubiquitous thief, and the banker issues a cheque book, thus facilitating the thief to draw cheques upon the customer's account, the liability for loss thus caused until recent times depended on the rule or proposition laid down by Ashurst J. in *Litkbarrow* v. *Mason* (1787), 2 term. Rep. 63, at page 70 in the following terms: "Whenever one of two innocent persons must suffer by the acts of a third, he who has enabled such third person to occasion the loss must sustain it". On the face of it, this formula is not only plausible but easy of application and is capable of solving any case where two innocent persons have been defrauded by a third party. For instance, I may negligently and carelessly leave a promissory note payable to my order on my writing table and if a servant or clerk steals it, and forges my endorsement and negotiates it to A who receives payment from the maker, the rule in *Litkborrow* v. *Mason* says that it is I who must suffer the loss because my negligence enabled the servant or clerk to steal the promissory note.

The "enabling" theory. If this maxim, which has been described as of "dangerous vagueness and seductive generality" had come to be ultimately accepted, the English law of negligence would by now have been in the wilderness. It, however, soon came under severe criticism because, as was observed by Moulton L. J. in *Smith* v. *Prosser* (1907), 2 K.B. 735, that the "enabling" rule, unless rigidly qualified, would make a party responsible for anything and everything which involves the bare "physical possibility of deception". The same view had been expressed by Parke B. (*Bank of Ireland* v. *Evans Trustees* (1885), 5 H.L.C. 385) in the following words: "if a man should lose his cheque book, or neglect to lock his desk in which it is kept, would it be contended that, if he kept his goods so negligently that a person took them and sold them, he must be disentitled to sue for their conversion ?"

The true basis of negligence. The rule of law which has now definitely emerged is that negligence (in the popular sense, meaning carelessness, stupidity or a remissness) is irrelevant and immaterial in law, unless there is a duty to take care. Such a duty may either be statutory, or contractual, or may be a special one arising from the relationship of the parties and the essence of any action founded upon it is not negligence as such, but the breach of that duty. Three instances of statutory duties will be dealt with later namely, the duty of the collecting banker (see *post* pages), in India, also that of the paying banker and banker as holder in due course, the duty imposed on the first mortgagee by section 78 of the Transfer of Property Act (see *post* pages) and the duty imposed on a bailee by section 151 of the Indian Contract Act (see *post* pages). As regards contractual duty the case of *Young* v. *Grote* (p. 134, *ante*) affords a good illustration, whilst the case of *Skyring* v. *Greenwood* (see *post* pages) is an example not of a contractual or statutory duty, but of a special duty arising from the relationship of the parties. Negligence, therefore, in law strictly means the breach of the legal duty to take care.

When Payment must be Refused.

The duty, as well as the authority of the banker, to pay cheques drawn upon him is determined:--

(1) By the countermanding of payment by the customer—Upon receipt of the customer's instruction not to honour a cheque the banker should make a note of it. "A bank could be sued as much for failing to honour a cheque as for cashing a cheque that had been stopped. Under the regulations, the bank had to inform the clearing house by 3-30 P. M. whether they honoured the cheque or not. They did not know the plantiff's address and when it came to a question of identification, it must always be remembered that the number of a cheque was the one certain item of identification" (*Hilton* v. *Westminster Bank Ltd.* (1927), 43 T.L.R. 124). It is therefore desirable to give the number of the cheque, the payment of which is desired to be stopped. The banker may postpone honouring a cheque, pending inquiry, if he receives a telegram or a telephone message purporting to come from his customer, instructing him to stop the payment of a particular cheque. However, the banker is not bound to accept an unauthorized telegram or telephone message of this nature. The effect of a notice countermanding payment of a cheque so far as the paying banker is concerned is the same as if the cheque had never been drawn (*Cohen* v. *Hale* (1878), 3 Q.B.D. 371). In *Weanhold* v. *Spitta* (1813), 3 Camp. 377, Lord Ellenborough observed that a stopped cheque became a piece of waste paper in the hands of the payee. In *Syed Mahomed Yaqub* v. *Imperial Bank of India*, A.I.R. [1941] Cal. 110, the defendant bank who had paid a cheque after a countermand notice, sought protection under a rule of current account rules, knowledge of which was admitted by the plantiff which provided as follows: "(1) the bank will register instructions from the drawer regarding cheques *lost* or *stolen* et cetera but cannot guarantee constituents against loss in such cases in event of a cheque being 'paid". Lord Williams J. disposed of this defence by saying that the rule relied upon was irrelevant. The cheque was not lost or stolen and "et cetera" must be read *ejusdem generis*. He further held that the rule was intended to apply to events happening prior to the time when a cheque reached the bank and was presented for payment and not to negligence committed by the bank after presentation.

Answer on stopped cheques. As regards the answers to be given in case of cheques duly stopped, it is necessary to avoid the use of words like "Payment stopped". As such words might be interpreted to mean that the drawer has become insolvent or the drawee had suspended payment, the proper answer should be "Orders not to pay" or "Payment countermanded by the drawer".

(2) Upon receipt of a notice of customer's death—Upon the death of a customer, the title to his bank balance passes to his legal representative. If, however, the banker is unaware of the death of his customer, he may honour a cheque drawn by that customer and debit his account with the amount, notwithstanding that payment has actually been made after the death of his customer.

(3) By customer's insolvency—In England, a bank can safely honour the cheques of his customer and can also deliver up any securities belonging to him, so long as the banker has no notice of the presentation of a

bankruptcy petition against the customer, or until the receiving order is made against him. In India, the position appears to be similar. Such notice need not be in writing and consequently the banker is sometimes placed in the awkward position whether or not to believe what he has heard. Until an order of adjudication is made against the debtor either on his petition or that of his creditors, his property remains vested in him. After the order of adjudication is made, the property of the insolvent vests in the official assignee in presidency-towns and in the official receiver in the mofussil (section 17 of the Presidency-Towns Insolvency Act, 1909; section 28 (2) of the Provincial Insolvency Act, 1920), when it is not open to the debtor to deal with his property, and the banker should then refuse to honour insolvent customer's cheques. In England, an insolvent who has been adjudicated, is called a bankrupt, whereas in India, he is known as insolvent throughout.

Acts of insolvency. The various acts or defaults upon which a petition may be presented against a debtor are as follows (see section 9 of the Presidency-Towns Insolvency Act, 1909, and section 6 of the Provincial Insolvency Act, 1920) :—

(1) if, in British India or elsewhere, he makes a transfer of all or substantially all his property to a third person for the benefit of his creditors generally ;

(2) if, in British India or elsewhere, he makes a transfer of his property or any part thereof with intent to defeat or delay his creditors ;

(3) if, in British India or elsewhere, he makes any transfer of his property or any part thereof, which would, under the Indian Insolvency Acts or any other enactment for the time being in force, be void as a fraudulent preference if he were adjudged an insolvent ;

(4) if, with intent to defeat or delay his creditors ,

(*a*) he departs or remains out of British India ;

(*b*) he departs from his dwelling house or usual place of business or otherwise absents himself ;

(*c*) he secludes himself so as to deprive his creditors of the means of communicating with him ;

(5) if any of his property has been sold, or attached for a period of not less than twenty-one days, in execution of the decree of any court for the payment of money ;

(6) if he petitions to be adjudged an insolvent ;

(7) if he gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts ;

(8) if he is imprisoned in execution of the decree of any court for the payment of money.

The act of an agent may be the act of the principal, even though the gent has no specific authority to commit the act.

(4) UPON RECEIPT OF A NOTICE OF THE INSANITY OF A CUSTOMER—hould the customer become absolutely insane or of unsound mind, the

banker should not honour his cheques; but payment of a cheque, drawn at a time when the customer was capable of acting rationally, is valid.

(5) BY GARNISHEE OR OTHER LEGAL ORDER ATTACHING OR OTHERWISE DEALING WITH CUSTOMER'S MONEY IN THE CUSTODY OF THE BANKER—After receipt of such orders, the banker should not honour cheques, drawn against the customer's account. As a result of a garnishee order the banker is stopped either absolutely or partially from carrying out his obligation to honour his client's cheques. When the banker is informed of the amount required for the satisfaction of the decree in connection with which the order is issued he can honour cheques as long as he can do so without touching the amount required for meeting the decree. In such a case the amount required can be transferred to a suspense account and the customer can be allowed to operate on the balance. In *Herschorn* v. *Evans* (1938), 2 K.B. 801, where there was a joint account in the name of husband and wife it was held that the joint account could not be garnished in execution of a decree obtained against the husband alone. It is not for for the banker, however, to question the propriety of the court's order nor can he, as a garnishee, be compelled to adjudicate upon conflicting equities. In *Plunkett* v. *Barclay's Bank Ltd.* (1936), 2 K.B. 107, the plaintiff, a solicitor, opened two accounts with the defendant bank, one in the firm's name and the second in the same name with the addition of the words "Clients' Account" in conformity with the Solicitor's Act, 1933. The plaintiff drew a cheque on the clients' account, which was in funds, in favour of a third party. Before the cheque was paid, the bank was served with a garnishee order in respect of a decree obtained against the plaintiff. The garnishee order was so worded as to apply to both the banking accounts and consequently the defendant bank dishonoured the plaintiff's cheque. It was held that the bank was justified in dishonouring the cheque and the plaintiff's claim therefore failed.

(6) On receipt by the banker of notice of assignment by the customer of the credit balance of his account.

(7) In case of trust account knowledge that the customer intends to use the funds in breach of trust, is a sufficient reason for refusing payment of the cheques.

(8) On knowledge of any defect in the title of the party presenting the cheque.

Legal Significance of Notice.

"NOTICE" EXPLAINED—The legal significance of the word "notice" occurring in this and other connections should be understood. In law, a person is said to have notice of a fact when he actually knows that fact or when, but for wilful abstention from an inquiry or search which he ought to have made, he would have known it. The first part deals with express or actual notice and the second part with what is known as "constructive" notice. Constructive notice arises by implication of equity in cases in which the court has been satisfied from the evidence that the party charged has designedly abstained from inquiry for the very purpose of avoiding notice........he having a suspicion of the truth and a fraudulent determination not to have it. If there is no fraudulent turning away from a knowledge of facts, if mere want of caution as distinguished from fraudulent and wilful blindness is all that can be imputed to the party, then the

doctrine of constructive notice will not apply" (*Jones* v. *Smith* (1841), Hare 43). Further a person is deemed to have notice of any fact if his agent acquires notice thereof whilst acting on his behalf in the course of business to which that fact is *material*.

STATUTORY PROVISIONS—Certain statutory provisions also declare what constitutes notice. For instance section 72 of the Indian Partnership Act, 1932 provides for the manner in which notice is to be given of the dissolution of a firm or retirement of a partner from the firm, *i.e.*, by publication in the local Official Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relates has its place or principal place of business. If this is done, no person will be heard to say that he had no notice of the dissolution of the firm or the retirement of the partner for the reason that he did not happen to read the *Gazette* or the newspapers. Similarly, under section 116 of the Presidency Firms Insolvency Act, a copy of the official *Gazette* containing any notice of an order of adjudication shall be conclusive evidence of the order having been made and its date. Finally, under the Transfer of Property Act, 1882, when a transaction affecting immovable property, which requires registration, is registered, the registration is notice to all subsequent transferees of that transaction. A subsequent transferee cannot be heard to say that he had not inspected the register and therefore did not know about the transaction.

Answers in case of Dishonoured Cheques.

When a banker decides not to honour a cheque, he should return it with a slip, giving the reason for the dishonour. There is no statutory obligation upon a banker to give a written answer on a cheque he decides to dishonour (Gilbart Lectures—Journal of the Institute of Bankers, 1935, p. 167). The rules of Bankers' Clearing Houses generally require, however, that no unpaid article can be accepted back unless it bears a written answer. As regards cheques presented over the counter although there is no legal obligation to give in writing the reason for non-payment bankers generally attach to the unpaid cheque a printed slip and mark the particular number of the appropriate answer (See Appendix A Form 20, post). The London Bankers' Clearing House requires that answers on such cheques should be given in full. He must, however, take care to see that he does not damage his customer's credit by an unwarrantable answer. The banker must also take care to see that the answer is not such as to mislead the party presenting the cheque. The banker's remarks on the slips are very brief. The following abbreviations were formerly used:—

(i) R. D.—"Refer to Drawer." It is generally meant to convey to the holder, that he should refer to the drawer for payment, that is, that the banker has not sufficient funds at his disposal to honour the cheque. In *Sterling* v. *Barclay's Bank Ltd.*, the Accountant's Journal, September 1930, p. 367, it was held for the first time, that the letters R. D. constituted libel, as they amounted to the dishonouring of a cheque. This decision may enable private persons to claim damages for libel, although prior to that decision it was never thought that the words "Refer to drawer" had any defamatory meaning, by implication. It is desirable, therefore, that this term "Refer to drawer" should be used with caution. By Lord Shaw's dictum in *London Joint Stock Bank Ltd.* v. *MacMillan and Arthur*, (1918) A.C. 777, the use of the term is permissible when there is reasonable ground

for suspecting that a cheque has been tempered with and a "reference" to the drawer "clears away the doubt."

(ii) N. S.—"Not sufficient"; N. E., "No effects", and N. F.; "No funds" are other abbreviations, used for the same purpose, but the abbreviation, R. D. which is less definite than the last three, is generally used.

(iii) E. I.– "Endorsement irregular": when an indorsement on a cheque is not in order, as is the case when the spelling of the payee's name, as given on the face of a cheque, differs from that in the indorsement, the cheque is returned with this remark.

(iv) E. N. C.—"Effects not cleared". This means that the drawer has paid in cheques or bills, which are in course of collection, but their proceeds are not avilable for meeting the cheque.

(v) D. D.—"Drawer deceased": when the banker hears of the death of the customer, he should no longer pay cheques, drawn by the deceased customer, prior to his demise.

(vi) The abbreviation W. & F. D. stands for "words and figures differ." This answer is given when the banker wants to return the cheques on the ground that the amount stated in words differs from that given in figures.

(vii) D. R. "Discharge required."

Banker as Payer of Domiciled Bills.

NO LEGAL OBLIGATION TO HONOUR BILLS—In an earlier part of this book we have stated, that it is the duty of a banker to honour his customer's cheques, provided he has funds available for the purpose. But in the case of bills, accepted by the customer and made payable by his banker, no such obligation arises. It is, therefore, desirable that there should be an agreement, express or implied, authorizing and empowering the banker to do this work for a particular customer. It must, however, be added that a banker who has previously honoured his customer's acceptances cannot discontinue to do so without giving due notice to his customer, for, consistent course of dealings establishes an agreement on the part of the banker to do so.

POINTS TO BE CONSIDERED IN HONOURING DOMICILED BILLS—Many of the considerations, to be borne in mind in connection with the payment of cheques, apply equally to the payment of domiciled bills. For example, the banker has to see, that the bill is in proper form; that it is duly stamped; it is due for payment and that the material alterations, if any, are confirmed. Moreover, as in the case of cheques, the banker must obtain his customer's authority to part with his funds, and he must see that his customer's authority is obtained by means of genuine acceptance on bills. While in the case of cheques, he has to make sure that the drawer's signature is genuine, in the case of bills, he must see that the acceptor's signature is not forged. In either case, should the signature of his customer turn out to be otherwise than genuine, the banker cannot debit his customer's account, except in a case, where the customer is estopped from denying its genuineness. However, if the drawer's signature on a bill, duly accepted by his customer and domiciled with his banker, turns out to be forged, the latter cannot be called upon to reimburse the loss resulting therefrom; it is no part of the banker's duty to see that the drawer's signatures on such instruments are genuine. Nor is it possible for him to verify the drawer's signature, as he may not have had any dealings with him. But even if he has had dealings with the

drawer of a bill accepted by his customer, it is the duty of the acceptor, and not of his banker, to make sure, that the signature of the drawer is genuine. However, the banker also runs the risk of negligently paying a bill bearing a forged indorsement. It is clear, that the customer domiciling the bill with his banker wishes the latter to make payment of the bill to a person entitled to it. In case, payment is made to a person, who has obtained title through a forged indorsement, the payment thus made by the banker, cannot be held to have been made to a person entitled to receive it, and therefore, the paying banker will not be entitled to debit his customer's account with the amount paid. Nor can he claim the protection given to the paying banker, in case of cheques by section 85 of the Negotiable Instruments Act, 1881. It follows, therefore, that the banker asks his customer to indemnify him, in respect of forged indorsements, if the former is to honour the latter's acceptances, without any additional risk.

CHAPTER VII

THE COLLECTING BANKER AND CUSTOMER'S ACCOUNT

Having considered the position of a banker as payer of his customer's cheques and bills domiciled with him, we propose to examine his position as collector of cheques and bills on behalf on his customers. It need hardly be mentioned, that a banker does not confine himself to the performance of this function only. Every banker acts both as a paying as well as a collecting banker.

Collection of cheques—It may be said that there is in theory, no legal obligation on a banker to collect cheques, drawn upon other banks for a customer. However, as we have noticed in the second chapter, the collection of cheques and bills on behalf of customers, is an important function of almost every modern bank, because it provides a facility which can hardly be dispensed with, especially in the case of crossed cheques. Although, a large part of this work is carried on through the bankers' clearing houses, yet it does not affect his legal position as regards the collection of cheques. It is, therefore, necessary that, in performing this function, the banker should be careful, otherwise he may land himself in difficulties.

Before considering the precautions which a banker as a collector of cheques should take, it is necessary to distinguish between his position as a holder for value of these instruments and as his customer's agent for collection.

Banker as holder for value—It should be noticed that. in the case of uncrossed or open cheques, the banker occupies exactly the same position as any other person who so acquires them. Where, to oblige a customer he pays before collection the amount of a cheque, drawn upon another banker, the position of the banker obliging the customer as regards the cheque is that of a holder for value. Similarly, where a customer pays in a cheque and the banker expressly or impliedly permits him to draw against it before it is cleared, the banker will be regarded as holder for value. In *A. L. Underwood Ltd.* v. *Barclays Bank* (1924), 1. K.B. 775, Lord Atkin said, "To constitute value, there must be, in such a case, a contract between banker and customer that the bank will, before receipt of the proceeds, honour cheques of the customer drawn against the cheques." In *Lloyds Bank* v. *Homley* (Financial Times, 5th July, 1933) the bank opened an account in the name of the customer with a cheque for £250, against which he was allowed to draw. The drawer of the cheque stopped payment of it and the bank sued the drawer, as a holder in due course, for the amount advanced. The drawer tried to bring in section 32 of the Bills of Exchange Act, 1882 (45 & 46 Vict., c. 61), and alleged negligence against the bank; the judge held that the point was immaterial. When a bank receives a cheque in specific reduction of an advance, or from a customer whose account is overdrawn, his position is that of a holder for value (*The London & County Banking Co.* v. *Groome*, L.R. 8 Q.B.D. 288 and *National Bank* v. *Silke* (1891), 1 Q.B. 435).

Rights as holder for value—In case of a forged indorsement on an open cheque, while the collecting banker is liable to the true owner, he has rights to recover the amount from the indorsers subsequent to the forgery.

Thus, if on account of having collected a cheque on which the last but one indorsement was forged, the banker has to refund its amount to the true owner, he acquires rights only against the last indorser, that is, his customer for whom he collected the cheque. However, the loss shall have to be borne by the collecting banker if the latter cannot be traced. According to Sir John Paget (The Law of Banking by Sir John Paget, 3rd Edn., p. 289), apart from the question of forged indorsement, if the customer has either no title to the cheque or his title is defective, the banker is a holder in due course, with good independent title against all the prior parties on the cheque. It should also be remembered, that there is nothing to prevent a banker from asserting the same rights, with regard to crossed cheques, taken by him, as holder for value, in respect of which either credit has been given by him to the customer's account, or cash has been paid by him. The legal position of the collecting banker in the United States of America appears to be far from satisfactory. In *Markovich* v. *American Exchange Irving Trust Co.* (Municipal Court of the City of New York, 229, New York Supplement 110; The Banker's Magazine, October, 1928), it was held, that a bank, collecting a cheque on a forgery of the payee's indorsement, is liable to the payee for the amount of the cheque.

As Agent—A banker, while collecting a cheque for a customer, cannot assert any right of a holder for value, as he is not one. He has no better title than that of his customer; so, if his customer has no title, the collecting banker can have none. Thus, a banker, collecting for his customer a cheque belonging to another person, can be held liable for conversion of money "had and received," unless he can prove that he acted in "good faith" and "without negligence" and that the cheque was crossed before it came into his hands.

Position of a collecting banker prior to the statutory protection—Before statutory protection was given to the collecting banker, his position was far from enviable, because as the payment for crossed cheques could not be received at the counter by persons other than bankers, he had to collect such cheques for his customers. In acceding to his customer's requests, he had to run risk of being held liable to the true owner. Lindley J. speaking of section 12 of the Crossed Cheques Act, 1876, said, "Take the position of a collecting bank. A collecting bank receives from its customers crossed cheques; they must collect them or leave them alone; practically, of course, they do collect them. Then it comes to this,—what is the consequence if they do collect, and the customer who sends the cheque to them happens to have a bad title? It is, to my mind, a little hard in any case that a banker who merely collects the money for his customer should be liable for the money. I do not mean to say that, as the law stood before, the banker was not liable; but it is a little hard; and it appeared to me to be only reasonable, at all events, that the legislature should relieve bankers from some of the consequences against which no amount of foresight could possibly guard. When we look at this 12th section, it is obvious that that is what is meant." (Bhashyam and Adiga's Negotiable Instruments Act, 8th Edn. p. 509). It will be seen, that, just as it is not possible for the paying banker to know whether or not the indorsements on a cheque drawn upon him are genuine, similarly it is impossible for a collecting banker to know about the genuineness of the indorsements on the cheque, given to him for collection.

Statutory protection—Section 131 of the Negotiable Instruments Act, 1881 (XXVI of 1881), which corresponds to section 82 of the Bills

of Exchange Act, 1882 (45 & 46 Vict., c. 61), and which governs the protection given to the collecting banker in India, runs as follows:—

> A banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.

FOR CROSSED CHEQUES ONLY—*Firstly*, it should be noted, that the statutory protection given to the collecting banker can be claimed only for crossed cheques, which term does not include cheques on which drawers' signatures are forged. The collecting banker can claim no protection in case of open cheques, probably on the ground that it is not necessary for the holder to collect them through a banker. It should also be noticed, that the protection can be claimed only for cheques crossed before they reach the banker. If the cheque is crossed after it has reached the hands of the collecting banker, he cannot claim protection under section 131, as such a cheque is not regarded as a crossed cheque within the meaning of the said section. All cheques received by bankers, are usually crossed by them with a rubber stamp as a precaution against their being stolen and cashed. When collected by another banker, they are treated as crossed, but, in case of their collection by the banker crossing them, statutory protection cannot be claimed. In England, section 95 of the Bills of Exchange Act affords protection to the collecting banker against the true owner also in the case of dividend warrants which can be crossed effectively. Indian practice also bears out the fact that dividend warrants can be effectively crossed, but, whether the protection accorded to the collecting banker in the case of crossed cheques extends to these instruments when crossed, depends upon the answer to the question, whether these instruments satisfy all the requirements of the definition of a cheque, given in an earlier chapter. The Bills of Exchange Act (1882), Amendment Act, 1932, extends the protection given in respect of cheques, to banker's drafts, although their drawer and drawee may be the offices of the same bank. The protection extends also to cheques crossed with the words "not negotiable."

COLLECTION ON BEHALF OF CUSTOMERS.—*Secondly*, the protection can be claimed only for those cheques which the banker collects as an agent and not for those collected as holder for value, or in which he acquires personal interest. The distinction between collecting a cheque and holding it for value was originally determined by the fact, whether or not the banker had paid cash or had given credit to the customer for its amount before collection. In England, bankers were generally in the habit of crediting their customers' accounts with the amounts of such cheques even before the receipt of their proceeds, but the drawback of this practice was brought home to them by the ruling in the case of *Capital and Counties Bank Ltd.* v. Gordon (1903) A.C. 240, which, apart from the question of the banker's liability to the true owner, laid down the following propositions (Paget's Law of Banking, 3rd Edn., pp. 321-322. See also *Mawji Shamji* v. *The National Bank of India*, 25 Bom. 499 (514).

1. That crediting as cash was equivalent to taking the cheque as transferee for value.

2. That it entitled the customer to draw against the cheque at once.

3. That the banker was nevertheless entitled to debit the customer with the amount in the event of the cheque being dishonoured, or the banker being made liable to the true owner.

THE BILLS OF EXCHANGE AMENDMENT ACT, 1906—The ruling referred to above prejudicial to the bankers in England as it was, led to the passing of the Bills of Exchange Amendment (Crossed Cheques) Act in 1906 (6 Edw. 7, c. 17). The operative part of this Act is contained in section 1, which runs as follows :—

> A banker receives payment of a crossed cheque for a customer within the meaning of section eighty-two of the Bills of Exchange Act, 1882, notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof.

NEGOTIABLE INSTRUMENTS (AMENDMENT) ACT, 1922—Thus the position of the collecting banker in England, which was weakened by the *Gordon Case*, was rehabilitated by the passing of the Amendment Act of 1906. However, bankers in India seem to have failed to realize the effect of the ruling referred to above. It was only in 1919, that the author of this book drew their attention to it at a public lecture on "The Banking Needs of India" (The Banking Needs of India by M. L. Tannan (1919), p. 11): but it apparently failed to awaken them. Thus their position continued to be unsatisfactory till 1922, when, through the Indian Merchants' Chamber, he approached the Legislative Department of the Government of India, which, after inviting the opinions of the important Chambers of Commerce and other public bodies, passed an Amendment Act on the lines of the (Crossed Cheques) Act of 1906, which added the following as Explanation to section 131 of Negotiable Instruments Act, 1881.

> A banker receives payment of a crossed cheque for a customer within the meaning of this section notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof.

A banker cannot be deemed to act as a mere agent for collection, when he does anything which is not consistent with such agency. If he takes the cheque as an independent holder by way of negotiation, he cannot receive payment for a customer because he receives it for himself. For instance, if he gives cash for it at the counter, he cannot claim the statutory protection by reason of having collected it. However, by merely having stamped his own name across the cheque in the ordinary course of business, a banker cannot be said to have dealt with it as an owner. Moreover, a bank must collect cheques on behalf of a customer. If a crossed cheque is collected on behalf of a person who is not a customer of the bank, it cannot claim protection under section 131 of the Negotiable Instruments Act, 1881. As to the question what constitutes a customer of a bank, it is needless to go over the ground again as it has been thoroughly covered in Chapter II of this book.

RECEIVE PAYMENT "IN GOOD FAITH AND WITHOUT NEGLIGENCE"—*Lastly*, the collecting banker can claim protection only if he receives payment "in good faith and without negligence". If the words "in good faith and without negligence" were to refer to the receipt of money only, they would, in the words of Sir John Paget, be, "nugatory, worse than nugatory and a mere trap". However, they refer to all the preliminary operations leading up to the receipt of the payment. The first part of this condition, which refers to good faith, does not require any comment, as, in this book, we have presumed that bankers act in good faith. It is, therefore, the second part which refers to negligence that need be considered here.

Basis of Negligence.

OPENING OF CURRENT ACCOUNTS WITHOUT SATISFACTORY REFERENCES—There has been considerable difference of opinion, as to what constitutes negligence for the purposes of section 131. It should be noted that negligence in this section is more or less artificial, as there is no contractual relationship between the collecting banker and the true owner of the cheques giving rise to a duty on the part of the former. His duty is only to his own customer. Perhaps the correct view is as stated in *Lloyds Bank* v. *E. B. Savory & Co.*, [1933] A.C. 201. Lord Wright observes "In an ordinary action in conversion, once the true owner proves his title and the act of taking by the defendant, absence of negligence or of intention or knowledge are alike immaterial as defences. Section 82 of the Bills of Exchange Act is therefore not the imposition of a new burden or duty on the collecting banker, but is a concession affording him the means of avoiding a liability in conversion to which otherwise there would be no defence." In other words, the legislature, whilst conferring a privilege on and granting an immunity to the banker which materially and prejudicially affects the rights of the true owner, has made the privilege and immunity conditional on due care being exercised by the collecting banker so that the interests of the true owner may to a certain measure be safeguarded.

SHIFTING IN ITS IMPLICATION—It must be admitted that the doctrine of negligence, in connection with the statutory protection given to the collecting banker, is so shifting in its implication that it cannot be said with certainty whether, in circumstances that have never been examined by the courts, the banker's conduct will be regarded as negligent. In *Lloyds Bank* v. *Chartered Bank of India, Australia and China Ltd.* (1929), 1. K.B. 40, it was stated, "There is no duty at common law on the collecting banker to exercise care; the duty is entirely created by the Act". The judicial expositions of the term "negligence" being couched in wide terms, can hardly be regarded as working principles. For example, the following definition of the term was given in *W. Wallbank & Co., Ltd.* v. *Westminster Bank Ltd.* "Negligence is the doing of that which a reasonable man under all the circumstances of the particular case in which he is acting, would not do, or the failure to do something which a reasonable man under those circumstances would do." In another case it was said that, "the test of negligence is whether the paying in any given cheque coupled with antecedent and present circumstances was so out of the ordinary course that it might have aroused doubts in the banker's mind and caused him to make inquiry".

Conversion.

DEFINITION—Conversion may be defined as the unlawful taking, using, disposing or destroying of goods, which is inconsistent with the owner's right of possession. Conversion is independent of intention or knowledge and an innocent party, even an agent for sale, may be held liable for conversion (*Hollins* v. *Fowler*, L. R. 7 H.L. at page 795).

CONVERSION APPLIES TO TANGIBLE PROPERTY AND NOT TO DEBTS—The remedy by way of a claim for damages for conversion is only available in the case of tangible moveable property and has no application to debts. In other words, there cannot be a conversion of a debt. If *A* owes money to *B* and *C* wrongfully recovers it, the only result is that *A* will have to pay *B* over

again. *B* cannot file a suit against *C* claiming damages for "conversion" of the debt.

CONVERSION OF NEGOTIABLE INSTRUMENTS—This introduces a serious complication when considering the doctrine of conversion as applied to negotiable instruments. A negotiable instrument is evidence of a debt and that is the valuable part which cannot be converted. There is also the chattel part of it, namely, the piece of paper on which it is written, which may be converted, but which clearly is worthless. It is a curiosity of English law that the only remedy available to a true owner who has been wrongfully deprived of a negotiable instrument is a suit in damages for the conversion of the *paper* in which the bill or note is written. As the paper is worthless, one may justifiably suppose that the damages in such an action would only be nominal. It is, however, now settled beyond controversy that the measure of damage is the face value of the instrument which has been converted.

BASIS FOR ASSESSMENT OF DAMAGES—The logic of this position may neither be clear nor satisfactory but the law has sometimes to be stretched to meet the ends of justice. In *Bavin Jr. and Sons* v. *London and South Western Bank*, [1900] Q.B. 270, it was said that " it was argued that if the action is treated as one of conversion, only nominal damages can be recovered, because the document converted in itself constituted no cause of action, but was merely evidence of a debt in respect of which it was given. But it was money paid and received in pursuance of the authority contained in the instrument and I doubt whether it lies in the mouths of those who have received, and who have given up plaintiff's document in exchange for that payment, to say that the money so paid is not, as against them, conclusive evidence of the value of the document which they have converted."

In *Morrison* v. *London County and Westminster Bank* (1914), 3 K.B. 356, the same thing was said in slightly different language. The principle probably is, to quote from that case, "that though the plaintiff might at any moment destroy the cheques while they remained in his possession, they are potential instruments whereby the sums they represent may be withdrawn from the bankers and if they get into any other hands than his, he will be the loser to the extent of the sums they represent. It may also be that any one who has obtained its value by presenting a cheque is estopped from asserting that it has only a nominal value." Finally in *A. L. Underwood Ltd.* v. *Bank of Liverpool* (1924), 1 K.B. 775, Scrutton, L.J. said, "Bankers who collect, borrow from their customers the proceeds when collected, and in collecting exhaust the operation of the cheque ; these operations have been held to amount to conversion of the cheques."

WHEN CONVERSION LIES—We have already discussed (see page 128 *ante*) the circumstances under which a true owner may be deprived of his rights to a negotiable instrument. The circumstances are when there is no forgery and the instrument comes into the hands of a holder in due course, or where there is a forgery and the instrument is a cheque, payment whereon has been made in due course by a banker. In all other cases the true owner can maintain a suit for conversion of the instrument.

BANKERS AND CONVERSION—It will thus be seen that if there was no statutory protection a banker would be liable for conversion if he paid a cheque on a forged indorsement or collected a bill, note, or cheque bearing a forged indorsement. As banking business is vital to the economic life of a

community and as the doctrine of conversion exposes bankers to the risks and hazards of indeterminable claims, the policy of the law has been to grant them a *conditional immunity or concession which is not enjoyed by the world at large*. A banker, however, who takes as holder for value a bill or cheque marked "not negotiable" will be liable in conversion, because there is no protection, statutory or otherwise, in such a case.

MONEYS HAD AND RECEIVED—In all claims for conversion, an alternative count is generally added for "moneys had and received to the use of the plaintiff" This is based upon the principle of English law that an aggrieved party is entitled to waive the tort and sue on a fictional contract. If *B* obtains payment from the drawee of a bill bearing the forged indorsement of *A*, who is the true owner, *A* is permitted to say to *B*: "I am the owner and you have received payment of the bill as my agent for collection. As such agent, account to me for the proceeds of the bill." In other words a notional contract of agency is assumed to exist between the parties and the action assumes the form usually adopted whenever a principal files a suit against an agent, to recover money, which he has received on behalf of his principal.

EXTENT OF CARE REQUIRED—Reverting to the subject of the duty of the collecting banker generally, he must exercise the same care and thought in the interests of the true owner of the cheque as a reasonable businessman would in his own interests. The extent of this duty may be realized from the fact that failure to obtain references or letters of introduction at the time of the opening of a current account, in the name of a person whose title to the cheques collected turned out to be defective, was held to amount to negligence sufficient to deprive the collecting banker of the statutory protection (*Ladbroke & Co.* v. *Todd* (1914, 30 T. L. R. 433). This view has been questioned in *Commissioners of Taxation* v. *English, Scottish and Australian Bank Ltd.*, [1920] A.C. 683, where their lordships, after pointing out that the words of the section are "without negligence receives payment," said, "It is not a question of negligence in opening an account though the circumstances connected with the opening of an account may shed light on the question, whether there was negligence in collecting the cheques." In *Guardians of S. John's Hampstead* v. *Barclays Bank Ltd.* (1923), 39 T.L.R. 229, a party, unknown to the bank opened an account after giving the name of a total stranger as reference. The reply to the bank's inquiry was satisfactory and the bank took no steps to check the reference ; this was one of the counts on which the court held the bank negligent.

FURTHER INSTANCES OF NEGLIGENCE—Some further phases of the duty of the collecting banker to the true owner, as established by legal decisions, are given below and these will help the reader to get an idea of the precautions which a collecting banker ought to take, so as to avoid being deprived of the statutory protection under section 131 on the ground of negligence.

VERIFICATION OF INDORSEMENTS—In the first place, it is to be remembered, that it is the duty of a collecting banker to verify indorsements on an order cheque. If there is an irregular indorsement he may be held to be guilty of negligence. In *Bavins Junior and Sims* v. *London and South-Western Bank Ltd.* (1900), 1 Q.B. 270, the Court of Appeal held that the collecting banker was guilty of negligence, on the ground that he failed to detect the discrepancy between the name of the payee and the indorsement on the cheque.

PER PRO INDORSEMENTS—In the case of a "per pro" indorsement, it has been held that the collecting banker is put on inquiry, and collection without satisfying about such indorsements, amounts to negligence (*Bissel & Co.* v. *Fox Brothers & Co.* (1885), 53 L.T.N.S. 663). A later ruling on the point seems to be slightly favourable to bankers. In *Crumplin* v. *The London Joint Stock Bank* (1913), 30 Times L.R., p. 99, the late Lord Sterndale, then Mr. Justice Pickford, held that the words, "per pro," on a cheque, did not put the bank upon inquiry, and the fact that the bank did not make inquiries was no complete evidence of negligence, on the part of the bank. Similarly, it is no part of the duty of the collecting banker to see, that the conditions, if any, to which the authority to sign was subject, have been fulfilled. However, it must be stated that, in the words of Bernard Campion K. C. "per pro." for the purpose of section 131 is an element not to be disregarded, as "the procuration signature at once shows you that the position of the person is professedly and completely a procuration position" (Journal of the Institute of Bankers, May, 1925, p. 235).

DISREGARD OF WARNING ON FACE OF INSTRUMENTS—The most important head of negligence dealt with in the decided cases, centres round the banker's disregard of the warning conveyed by the form of the instrument itself, apart from any actual knowledge possessed by the banker of the customer's position, that the customer is either committing a breach of trust or is misappropriating moneys belonging to somebody else. The principle itself, which is not confined to collecting bankers, is very wide and is best illustrated by the House of Lords' decision in *Reckitt* v. *Barnett, Pembroke and Slater Ltd.*, [1929] A.C. 176. In that case the plaintiff gave to Lord Terrington, a solicitor, a power of attorney to conduct his business and as ancillary thereto, authorized him to draw cheques "without restriction" in his name. Lord Terrington purchased a motor car for his own use from the defendants and paid the price by drawing a cheque in the name of his principal. In a suit by the plaintiff against the defendants for damages for conversion of the cheque, or in the alternative for "moneys had and received," it was held (1) that the power of attorney did not confer upon Lord Terrington the authority to use the plaintiff's money for the purpose of paying his private debts ; (2) that the defendants, having notice on the face of the cheque that the plaintiff's money was being applied to Lord Terrington's private purposes, were not entitled to hold the proceeds of the cheque.

In the following five illustrations, all taken from decided cases, there is the universal feature that the cheque, on the face of it, told an unmistakable story which the banker ignored at his peril.

(A) In *Midland Bank Ltd.* v. *Reckitt*, [1933] A.C. 1, the case arose out of the fraud of the same solicitor Lord Terrington who drew cheques on Reckitt's account pursuant to the power of attorney and paid them into his private account with the Midland Bank who collected them for him. The bank was held guilty of negligence because there was notice on the face of the cheques that Lord Terrington was applying plaintiff's money to his private purposes. The warning would be conveyed to the banker by the form of drawer's signature.

(B) In *Lloyd's Bank* v. *Chartered Bank of India Ltd.* (1929). 1 K.B. 40, the chief accountant of Lloyd's Bank in Bombay was authorized to draw cheques on the account kept by the Lloyd's Bank with the Imperial Bank of India. Pursuant to this authority, L. drew certain cheques for large sums on

the Imperial Bank and made them payable to the Chartered Bank where L. had his private account. These cheques were handed over by L. to the Chartered Bank with express directions that the proceeds after collection should be credited to his private account. The Chartered Bank was held guilty of negligence on the principle explained above. Here, also, the Bank was fixed with notice by the form of the drawer's signature.

(C) In *Underwood Ltd.* v. *Bank of Liverpool* (1924), 1 K.B. 775, the sole director of a "one-man" company and himself the one man, indorsed in the name of the company, cheques drawn by third parties in favour of the company and paid them into his personal account with the defendant bank who collected them on his behalf and credited him with the proceeds. It is needless to say that the bank was held liable as the name of the payee and the per pro indorsement clearly showed that the director, in all probability, was misappropriating the company's moneys.

(D) In *Bevan* v. *National Bank Ltd.* (1906), 23 Times L.R. 65, a cheque which was made payable to a partnership firm was endorsed by one partner on behalf of the firm and was paid into his private account for collection with the defendant bank. The case is on all fours with *Underwood's case*, the warning here being similarly given by the payee's name and the form of the indorsement.

(E) In *Worshipful Company of Carpenters of the City of London* v. *British Mutual Banking Co. Ltd.* (1938), 1 K.B. 511, the plaintiffs, managers of a convalescent home, kept an account with the defendant bank. The plaintiffs employed a secretary who also maintained his personal account with the same branch of the defendant bank. The secretary got hold of certain cheques properly signed by the proper officers of the plaintiffs, drawn in favour of persons who had supplied goods to the plaintiffs, forged the indorsements of the payees and paid the cheques into his private account with the defendant bank for collection. Here the secretary was known by the bank to be an employee of the plaintiffs and the cheques, *ex facie*, showed that they were meant for third parties and it could never be supposed that they were intended to be drawn by the plaintiffs for the private benefit of the secretary. The bank was therefore held liable.

The true legal position is admirably summarized by Lord Wright in *E.B. Savory & Co.* v. *Lloyds Bank*, [1933] A.C. 201, in language which cannot be improved upon. Lord Wright says at pp. 229, 230, "The most obvious circumstances which should put the banker on his guard (apart from manifest irregularities in the indorsement and such like) are where the cheque *bears on its face* a warning that the customer may have misappropriated it, as for instance when a customer known to be a servant or agent pays for collection a cheque drawn by third parties in favour of his employer or principal. Such a case carries even a clearer warning if the cheque is indorsed per pro. the employer or principal by the servant or agent. A second type of case is where a servant steals cheques drawn by his employers and pays them or procures their payment into his own account. In all these cases, the cheque in itself, apart from knowledge possessed of the customer's position, indicates a possibility or even probability that the servant or agent may have misappropriated it and hence the bank may be converting it."

Savory's case carried these principles to their logical conclusion though it gave rise to a sharp conflict of judicial opinion in the highest tribunal.

The House of Lords, in that case held that if a customer is known to the bank to be an employee, it must under pain of being held guilty of negligence, ascertain who his employer is so that the bank would be on its guard against collecting for the employee, cheques drawn by the employer in favour of third parties. Lord Wright referring to this aspect of the case said "Where the new customer is employed in some position which involves his handling and having the opportunity of stealing his employer's cheques, bankers fail to take adequate precautions if they do not ask the name of his employers; it may be different in the case of an employee whose work does not involve such opportunities, as for instance, a technical employee in a factory.

Third party cheques—The last case which needs reference on the point is that of *Motor Traders Guarantee Corporation Ltd.* v. *Midland Bank Ltd.* (1937), 4 All. E. R. 90, where the principle was stressed that in collecting third party cheques (*i.e.*, cheques in which the customer is not the payee but the endorsee) bankers should exercise extra precautions to safeguard the interests of the true owner. The facts of this case were as follows: Turner, a motor car dealer in Bristol, had an account with the Bristol branch of the defendant bank. He fraudulently induced the plaintiffs, a motor car hire-purchase finance corporation to make out a crossed cheque for £189-5-0 in favour of W. & Co., a well-known firm of motor dealers in Bristol. The representation which Turner made to the plaintiffs was that he intended to buy a car from W. & Co., for the amount shown in the cheque and that he would ultimately enter into a hire-purchase agreement with the plaintiff in respect of that car. Turner forged the indorsement of W. & Co., added his own to it and paid it into his account with the defendant bank. The cashier made inquiries of Turner and was satisfied with the explanation given by Turner, the court holding that in the circumstances the cashier behaved neither negligently nor unreasonably in accepting the explanation. Nevertheless the court imported negligence for two reasons: (*a*) the cheque in question being what is called a third party cheque, the bank's regulations required it to be dealt with by the branch manager and not the cashier. The cashier never referred the matter to the branch manager: (*b*) the cashier neglected to make inquiries as to the past banking history of Turner which, if made, would have disclosed the fact that several cheques drawn by Turner on the defendant had been dishonoured by the defendants for want of funds. The history of the dishonoured cheques would, in ordinary circumstances, have conveyed the impression that Turner was neither a person of substance nor of proved business integrity.

Position of paying banker distinguished from that of collecting banker—The position of the paying bank must be carefully distinguished from that of the collecting bank as the former, as regards legal liability stands on an entirely different footing from the latter. There are two important reasons for the distinction which makes the position of the paying banker more secure and precludes the extension of the principle of *Reckitt* v. *Barnett*, 1929 A.C. 176 to him. In the first place, if a cheque is properly drawn and is otherwise regular in form, a banker is bound to honour it in the absence of express notice that the customer is committing a fraud (*Gray* v. *Johnson*, L.R. H.L. 1). In the second place, the element of negligence does not enter into the consideration of the matter at all, because, in England at least a banker is protected even if he pays a cheque negligently as was held by a majority of the judges of the Appeal Court in *Worshipful Company of Carpenters* v. *British Mutual Banking Co. Ltd.* (1938), 1 K.B. 511. There

are two decided cases in England the facts of which at first sight appear to be indistinguishable from Underwood's or Bevan's case (Illustrations C & D), *supra*. The first case is that of *Bank of New South Wales* v. *Goulburn Valley Butter Co.*, [1902] A.C. 543. The plaintiffs, a "one-man" company, had an account with the defendant bank. The sole director, himself the one man, had also his own private account with the bank. The sole director, who was duly authorized drew two cheques on the company's account and paid the proceeds into his personal account with the defendant bank. The bank was sued as a paying bank and for reasons already given was exonerated from liability. The second case is that of *Backhouse* v. *Charlton*, L. R. 8 Ch. D. 444. A partnership firm consisting of three partners had an account with the defendant bank, each partner being authorized to draw cheques upon the account. One of the partners had also his personal account with the bank. That partner drew a cheque upon the partnership funds and had the proceeds credited to his personal account. The bank was held not liable.

POSITION OF A BANK ACTING BOTH AS COLLECTING AND PAYING BANKER— It may pertinently be asked what the position would be if the same bank acted as a collecting bank and as a paying bank? As a paying bank the element of negligence would become immaterial but as a collecting bank it would be the decisive factor in the case. The point actually arose in the case of *Worshipful Company of Carpenters*, *supra*, and it was there held that though the bank as a paying bank was discharged, it was liable as a collecting bank, negligence having been established. The reasoning upon which the majority view was based is as follows: Section 60 of the Bills of Exchange Act, 1882 (45 & 46 Vict., c. 61) gives protection to a banker who pays a cheque in good faith and in the ordinary course of business. Good faith is defined by section 90, *ibid.*, as follows:—

> A thing is deemed to be done in good faith, within the meaning of this act, where it is in fact done honestly, whether it is done negligently or not.

"Ordinary course of business" is not defined in the Act and the question in the case was as to what these words meant. Green L. J. said that the bank could not be heard to say that it paid the cheque in the ordinary course of business if it was found that it acted negligently. Mackinnon L. J and Slesser L. J. on the other hand, expressed the view that "ordinary course of business" simply meant that the payment must not be contrary to the established practice or custom of bankers. For instance, if a crossed cheque is paid over the counter, or where payment is made notwithstanding irregular indorsements or outside of business hours, or where a very large sum is paid over the counter to a suspicious looking person (based on a dictum in *Vagliano* v. *Bank of England*, [1891] A. C. 109) then such payment would not be in the ordinary course of business: otherwise negligence may be perfectly consistent with a cheque being paid in the ordinary course of business. In India the position is materially different. Section 85 of the Negotiable Instruments Act, 1881 (XXVI of 1881) protects the banker if he pays the cheque in due course and section 10, *ibid* defines payment in due course as payment *without negligence*. The English case, therefore, has no application in India. In this case it was also held that as far as cheques were concerned, section 60 of the Bills of Exchange Act 1882 (45 & 46 Vict., c. 61) by implication repealed section 19 of the English Stamp Act, 1853 (16 & 17 Vict. c. 59). This section deals

with drafts, bills or orders, drawn upon a banker and it provides that if the draft or order, when presented for payment, purports to be indorsed by the person to whom it is drawn payable, it shall be a sufficient authority to the banker to pay the bearer, and it shall not be incumbent on the banker to prove that any indorsement was made by, or with the authority of, the payee or subsequent indorsees. It will be seen that this section does not contain any words requiring the payment to be made in good faith or in the ordinary course of business. If the case therefore fell within section 19 of the Stamp Act, no question could arise as to what is payment in the ordinary course of business. That question only arose because the appeal court decided that section 60 of the Bills of Exchange Act repealed section 19 as far as cheques were concerned and the former was the section that regulated the protection of the banker.

STATE OF CUSTOMER'S ACCOUNT—The question, as to whether the collecting banker should take into consideration the state of the customer's account, is not quite free from doubt. In *Commissioners of Taxation* v. *English, Scottish and Australian Bank Ltd.*, (1920) A.C. 683 (690), an account was opened with £20 and the next day a cheque for £786-18-3, payable to bearer, was paid in to the credit of the customer's account. The Privy Council saw nothing in this to excite suspicion, or to create the duty of enquiry on the part of the bank. In *Guardians of St. John's Hampstead* v. *Barclays Bank Ltd.* 39 T. L. R. 229, however, the same feature was one of the incidents which led the court to hold the bank negligent. Sir John Paget seems to support the view taken in the latter case. In any case, the collecting banker cannot shut his eyes to transactions, on an account incompatible, with the customer's circumstances in life, known to the banker. In *Lloyds Bank Ltd.* v. *Chartered Bank of India, Australia and China Ltd.* (1929), 1, K. B. 40, a clerk of the plantiff bank sent to the defendant bank for the credit of his account, bank drafts drawn in favour of Lloyds Bank and immediately drew out money by payments to stock brokers. The court held that the absence of inquiry as to the source of such large amounts—sums incompatible with the customer's salary coupled with the fact that his account was generally in poor condition, was negligence on the part of the defendant bank. It is, therefore, desirable that a senior officer should scrutinize periodically cheques paid in for the credit of the customers of the bank.

"ACCOUNT PAYEE" CHEQUES—As already stated, when a cheque is crossed with the words "Account Payee" or "Account of X. Y." it acts as a notice to the collecting banker not to collect the cheque except for the benefit of the payee or the person named and if the collecting banker collects such a cheque on behalf of another person the collecting banker may be deprived of the statutory protection.

Collecting Banker and his Customer.

DUE CARE AND DILIGENCE IN COLLECTION OF CHEQUES—Having dealt with the position of the collecting banker in relation to the true owner of the cheque, we shall now consider the question of the duty of the collecting banker to his customer. As his customer's agent, the collecting banker is bound to show due care and diligence in the collection of cheques given to him. If he fails in his duty, or neglects to use the recognized channels for the purpose and, as a direct consequence of his negligence, his customer suffers a loss, the collecting banker will be required to make good that loss. For instance if a banker to whom cheques have been given for collection, fails to present them with in a reasonable time, by which term is meant at

the latest the next working day after receipt of the cheque by the collecting banker, and in the meantime if the banker on whom the cheques are drawn fails, his customer will hold the collecting banker liable for any loss the customer may suffer as a result of the failure of the drawee bank. Another instance of lack of proper dilligence on the part of a banker is furnished in *Forman* v. *Bank of England* (1902) 18 T. L. R. 339, where a customer of the Bank of England paid in a cheque for £500 drawn on a bank in Norwich, alternatively payable in London. The collecting bank passed the cheque through country clearing, against the banking practice to such cheques through town clearing. On the following day, a cheque drawn by the customer was dishonoured and the court held the bank liable to pay damages.

NOTICE OF DISHONOUR—Similarly, the collecting banker should show due diligence in informing his customer about the dishonour of a cheque, so as to enable him to recover the amount from the parties liable on the same. Generally, bankers present the cheques to be collected on the same day on which they are received or on the following working day if the two bankers, the collecting and the paying, are in the same city. If they are in two different cities, the collecting banker should send the cheques to his agent in the town where the particular branch of the drawee bank is, either on the same day on which he receives them, or on the following working day. The same rule applies to the notice of dishonour. It is contended that if a cheque is returned by the drawee bank to the collecting banker for confirmation of indorsement or other cause to which he can attend without troubling his customer, notice to the effect should, nevertheless, be duly sent to the latter. Failure to do so may result in the banker having to suffer loss, if the cheque is returned a second time on some other ground. Such a notice may be given by a personal communication such as on the telephone, although it is preferable to give it in writing. Notice by telegram would seem to be good, but it must be confirmed by a letter.

POSITION IN CASE COLLECTING AND PAYING BANK IS THE SAME—When the cheque paid in happens to be drawn on the same office of the same bank, it can legally be held over till the close of the following working day. Generally such cheques are honoured or returned before the close of business on the day they are paid in. In case the customer asks for and is given a decisive answer in the affirmative the cheque will have to be treated as paid.

Collection of Customer's Bills.

NO LEGAL OBLIGATION TO COLLECT BILLS—Although, strictly speaking bankers are not legally bound to collect bills for customers, no commercial bank in modern times can afford to refuse to render this service. This work is taken up by a banker not only for the convenience of his clients, but also because it adds to his own profits, as he generally makes a charge for the collection of bills. Moreover, by offering this facility a banker is likely to attract some new accounts as it generally happens, if an acceptor of a bill finds that a good many of his acceptances are lodged for collection with a particular bank, he may regard it more convenient to open an account with that bank and make payments of his bills by cheques drawn upon the same bank or by mere transfer entries in its books.

Precautions.

NO STATUTORY PROTECTION—In collecting bills a banker has to satisfy himself that the title of the person for whom he collects them is not defective, as the statutory protection afforded to collecting bankers by section 131 of

the Negotiable Instruments Act, 1881 does not extend to bills. Thus it will be noticed, that, in case the title of the banker's client to a bill collected for him by the banker turns out to be defective, as in the case of a forged indorsement on the bill, the true owner can claim the amount of the bill from the banker, who, in his turn, can look to his customer for making good the loss to him.

PRESENTMENT FOR ACCEPTANCE—In case the bill is not already accepted, the banker has to present it for acceptance. Section 61 of the Negotiable Instruments Act, 1881 which governs the presentment for acceptance runs as follows:—

> A bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can, after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.
>
> If the drawee cannot after reasonable search be found, the bill is dishonoured.
>
> If the bill is directed to the drawee at a particular place, it must be presented at that place; and if at the due date for presentment he cannot, after reasonable search be found there, the bill is dishonoured.
>
> Where authorized by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.

Without the consent of his customer, a banker must not commit the blunder of either agreeing to take a qualified acceptance, or taking the drawee's cheque and giving the bill to him, as it would release the drawer and the indorsers of the bill.

PRESENTMENT FOR ACCEPTANCE WHEN EXCUSED—Presentment for acceptance is excused in the following cases:—

(a) where the bill is payable on demand;
(b) where the drawee is either a fictitious person, dead, insane, or bankrupt, or a person having no capacity to enter into contracts by bills;
(c) where, in spite of reasonable diligence on the part of the banker, the presentment cannot be effected;
(d) where, although the presentment is not quite regular, the drawee has refused to accept it on some other ground.

ADVANTAGES OF PRESENTMENT FOR ACCEPTANCE AT AN EARLY DATE—Whether the banker holds an unaccepted bill as a holder for value or on behalf of his customer, it is very desirable that the same should be presented for acceptance as early as possible, firstly, because, on the acceptance of a bill, an additional security is given to the banker by the drawee becoming liable on the same. Secondly, the banker is expected to act in a manner most beneficial to his customer's interests. Thirdly, in case the bill is payable after the expiry of a certain period after sight, presentment for acceptance is necessary in order to fix the date of maturity of the bill and the sooner it is presented and accepted, the earlier will it mature. It is, therefore, the banker's duty to exercise care and promptness in presenting the bill for acceptance. In case the banker fails in this duty, and, thereby, the customer suffers loss, the banker is liable to his customer.) As to the period during which the bill, after its receipt, should be presented for acceptance, it should be noted that, generally, a bill is presented for acceptance either on the same day on which it is received, or on the following working day, if the place at which it is to be presented is within the area of the banker's call. Otherwise the banker sends it to his agent in the place where the drawee carries

on his business, as given in the bill. If the banker has no agent at the place, the bill may be sent to the drawee by registered post. However, in determining what is a reasonable time for presentment for acceptance, section 105 of the Negotiable Instruments Act, 1881 requires that regard should be had to the nature of the bill and the usual course of dealing with respect to similar instruments, public holidays being excepted, in the calculation of such time.' In exceptional circumstances, when presentment cannot be made within a reasonable time, the banker should inform his client, or correspondent, from whom he received the bill. By section 75A of the Negotiable Instruments Act, 1881, delay in presentment for acceptance is excused, if the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. Thus, delay will be excused in case of sudden sickness or inevitable accident or other reasonable cause, but presentment must be made with due diligence after the cause for delay ceases to operate.

ACCEPTANCE NEED NOT NECESSARILY BE ON THE FACE OF THE BILL—It is not necessary that the acceptance must be on the face of the bill, although, generally, it is put there (*Young* v. *Glover* (1857), 3 Jur. N. S. 637). However, the acceptance, like an indorsement, should not be preceded or followed by a courtesy or other title, and, particularly, in case of bills payable after sight, the date of the presentment for acceptance should also be added to the acceptance. In order to make the acceptor liable, the bill should be returned duly accepted. It is essential that, in all cases, the acceptance is on the bill itself, whether on the face or on the back; otherwise it is a mere nullity (*Ardesher Sorabsha Moos* v. *Khushaldas Gokuldas*, 32 Bom. 247). But a foreign bill might even be accepted by letter (*Billing* v. *Devoux* (1831), 3 M. & Gr. 565). It was held that the undue retention of a bill by the drawee might amount to an acceptance (*Harvey* v. *Martin* (1808), 1 Camp. 425), *Hundies* may be accepted orally by custom (*Pannalal* v. *Hargobind* 51 I.C. 250). In case of dishonour of a bill by non-acceptance, it is the duty of the banker to return it to the customer. In case of foreign bills, the banker should have them protested (see Appendix A, Form No. 25 (*a*), *post*) or noted and a formal protest sent afterwards.

PRESENTMENT FOR PAYMENT—We shall now consider the duty of the banker with regard to the presentment of bills for payment. Section 64 of the Negotiable Instruments Act, 1881 lays down :—

> Promissory notes, bills of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder.
>
> Where authorized by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.
>
> *Exception*—Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

PRESENTMENT NOT NECESSARY TO CHARGE THE MAKER OR ACCEPTOR—Presentment for payment is not generally necessary to charge the maker in the case of a promissory note, or acceptor in the case of a bill, on the ground that he is the principal debtor. Failure to present the bill to him may affect costs of the suit, if the defendant on the suit being filed pays the amount in court. So far as the drawer and the indorsers are concerned, presentment for payment of bills is necessary, in order to hold them liable in the event of the bill being dishonoured.

WHEN AND WHERE SHOULD PRESENTMENT BE MADE?—Presentment for payment should be made by the holder, or by his authorized agent, during the usual business hours, on a working day, at the drawee's place of business, if known, otherwise at his residence. In case of bills, having two or more drawees not in partnership, presentment must be made to all of them. When the drawee is dead, presentment should be made to his personal representative, if he can be found.

RULES FOR FIXING THE DATES OF PAYMENT OF BILLS—Section 66 of the Negotiable Instruments Act, 1881 requires that a promissory note or bill of exchange made payable at a specified period after date or sight thereof must be presented for payment at maturity. The rules for calculating the date on which an instrument is deemed to be at maturity are contained in sections 21 to 25, *ibid.* Section 21, *ibid.*, provides that in a promissory note or bill of exchange, the expressions "at sight" and "on presentment" mean on demand. The expression "after sight" means, in a promissory note, after presentment for sight, and, in a bill of exchange, after acceptance. By section 22 the maturity of a promissory note or bill of exchange is the date at which it falls due. Every promissory note or bill of exchange which is not expressed to be payable on demand, at sight or on presentment, is at maturity the third day after the day on which it is expressed to be payable. This provides for the three days of grace which must be allowed in the case of a bill or note which is not payable on demand, at sight, or on presentment. Section 23, *ibid*, provides that in calculating the date at which a promissory note or bill of exchange, made payable a stated number of months after date or after sight is at maturity, the period stated shall be held to terminate on the day of the month which corresponds with the day on which the instrument is dated or presented for acceptance or sight ; if the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month. Two examples will make the rule clear. A promissory note dated 31st January, 1941 is made payable after one month ; February has no corresponding day, therefore the note is at maturity on the 3rd March, 1941 (28th February, plus the three days of grace). A bill of exchange is made payable three months after sight ; it is accepted on 31st August, 1940 ; it is at maturity on 3rd December, 1940 (30th November plus the three days of grace). Section 23 deals with instruments expressed to be payable after a stated number of months. Section 29 deals with instruments made payable after a stated number of days and the rule is to exclude the first day. For example, a promissory note dated 24th January, 1941 is made payable twenty-one days after date : it is at maturity on 17th February, 1941 (exclude 24th January). A bill of exchange is made payable thirty days after sight ; it is accepted on 31st January, 1941 : it is at maturity on 5th March, 1941. Section 25, *ibid.*, provides that if the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day. In England the rule is somewhat different according to which if the last day of grace falls upon a public holiday (*i.e.*, Sunday or Christmas or New Year or Good Friday) the instrument is payable on the preceding business day ; but when it falls on a Bank Holiday the instrument is payable the next succeeding day. There is no such distinction in India.

NOTING AND PROTESTING—In the absence of instructions from their customers in respect of dishonour of inland bills, collecting bankers, do not generally get them noted, but when a foreign bill is dishonoured. the banker must have it protested, unless he has been asked by his customer not to do so.

NOTICE OF DISHONOUR—Generally, when a bill is dishonoured by non-payment, the banker, when he is acting as his customer's agent, should return the bill to him. In case the banker has discounted the bill and allowed his customer to draw its proceeds, he should give notice of dishonour to one or more of the parties liable on the bill, if he is not sure of recovering the amount from his customer. However, if the customer is good enough for the amounts, the banker should return the bill to him and ask him to pay the amount of the bill plus interest and other charges. It is not necessary that the notice should be in writing, but the verbal notice in such cases should not be depended upon, as, in the event of the other party denying its receipt, evidence will have to be produced in support of it. When a bill is returned, it serves as a notice, but it is desirable that a separate notice should be sent along with it ; for specimen of Advice of Non-acceptance, Non-payment of a Bill and Notice of Dishonour, see Appendix A, Form Nos. 25 (*b*), 25 (*c*), *post*. The banker should see that the notice is properly addressed and posted.

Pass-Book.

ITS CONTENTS—At this stage of our discussion of the subject, it is desirable to consider the position of the pass-book in respect of its bearing on the transactions between the banker and his customer. This is a book in which the banker keeps a record of his customer's account for the latter's use and is so called because it passes periodically between the banker and his customer. Formerly, it contained a copy of the customer's ledger account, as it appeared in the banker's books and was headed thus:

K. P. BASU, Esquire,
In a/c. with
The A. B. Bank, Ltd.
Dalhousie Square, Calcutta.

Dr. *Cr.*

Date.	Particulars.	Rs.	A.	P.	Date.	Particulars.	Rs.	A.	P.
1932 Jan. 1 ..	To Subscription for membership of the Orient Club.	10	0	0	1932 Jan. 1 ..	By Balance b/f	2550	12	11
,, 2 ..	To P. K. Batliboi. (Cheque F/No. 990705) G	2570	3	6	,, 3 ..	By Cash	375	2	6
,, 3 ..	To cost of 50 Madan Theatres shares purchased.	100	0	0	,, 6 ..	By Bill collected	3010	0	0
	To Balance ..	4311	4	0	,, 10 ..	By cheques	1056	8	1
		6991	7	6			6991	7	6

The above form represents the customer's a/c. as kept in the books of the bank and accordingly the items of receipts by the bank appear on the credit side and those of payments on the debit side of the account. However, nowadays the pass-book, used by most of the banks, contains entries as would be made by the customer in his books. In other words, it is a copy of the banker's account in his customer's book as given below:—

A. B. BANK LTD.
in a/c. with
K. P. Basu, Esquire.

Dr. *Cr.*

Date.	Particulars.	Rs.	A.	P.	Date.	Particulars.	Rs.	A.	P.
1931 July 1	To balance	500	—	—	1932 July 5	By cheque	210	—	—
" 4	" cash	200	—	—					
		700	0	0		" Balance	490	0	0
	" balance	700	0	0			700	0	0

The debit and credit items in this appear on the right and left sides respectively, *i.e.*, just the reverse of the form in which they were formerly given. This facilitates the customer in understanding the state of his account.

STATEMENTS OF ACCOUNTS—Introduction of loose-leaf ledgers and the use of accounting machines, have recently led some banks in western countries to send statements of accounts to their customers daily or periodically as agreed upon. In case of foreign accounts, some banks make use of photography to save the labour of writing statements cf accounts. The actual ledger pages are photographed by bank employees who are expert photographers and the resulting prints are sent to the customers.

PASS-BOOK TO CONSTITUTE AN AUTHENTIC RECORD—Sir John Paget, speaking of the pass-book, says in the Law of Banking, 4th Edn., p. 294, "Its proper function is to constitute a conclusive and unquestionable record of the transactions between banker and customer and it should be recognized as such." In support of this view, he cites *Devaynes* v. *Noble* (1816), 1 Meriavale 530,535, in which the Court of Chancery ordered an inquiry into the nature and effect of the pass-book. The report to which reference at length is made in the judgment says that, on delivery of the pass-book to the customer, he "examines it and if there appears any error or omission, brings or sends it back to be rectified; or if not, his silence is regarded as an admission that the entries are correct." However, in view of several decisions on the subject, the legal position, in England as well as in India, is far from what is stated above.

In *Keptigalla Rubber Estates Co.* v. *National Bank of India* (1909), 2 K.B. 1010, Mr. Justice Bray said that he knew of no authority in England

for the proposition that, when a pass-book is taken out of the bank by the customer or some clerk of his and returned without objection, the account between the bank and his customer is regarded as settled and is binding on both. He added, "Apart from authority, one has only to look at the facts of this case to see how absurd it would be to hold that the taking out of the pass-book and its return constituted a settled account" (The Law of Banking by Sir John Paget (4th Ed.), P. 303). If, however, a business firm returns its pass-book after ticking the entries, it is treated as *prima facie* evidence of the customer having examined and passed as correct, the entries in the pass-book.

DUTY OF CUSTOMER TO EXAMINE HIS PASS-BOOK RECOGNIZED IN U.S.A.—In the United States of America, the point has been judicially settled in a way favourable to the banker. The presiding judge, while delivering judgment in *Morgan* v. *United States Mortgage and Trust Co.* (1913) 208 New York Rep. 218, said, "The depositor who sends his pass-book to be written up and receives it back with his paid cheques as vouchers is bound to examine the pass-book and vouchers and to report to the bank without unreasonable delay any errors which may be discovered." As to the negligence he said, "Negligence in this case means the neglect to do those things dictated by ordinary business customs and prudence and fair dealing towards the bank which, if done, would have prevented the wrong doing which resulted from the omission."

EFFECT OF ENTRIES IN THE PASS-BOOK—In order to understand the position clearly, we propose to consider the effects of entries in the pass-book made by mistake, firstly to the credit of the customer and secondly to that of the banker.

ENTRIES FAVOURABLE TO CUSTOMER—As the entries in the pass-book are made by the banker or his agent, the pass-book record can be used as evidence against the banker. In *Akrokerri (Atlantic) Mines Ltd.* v. *Economic Bank* (1904), 2 K.B. 465 (471); see also *Mawji* v. *The National Bank of India* (1901), 25 Bom. 499 (515); it was held that, "The pass-book ...... belongs to the customer and the entries made in it by the bank are statements on which the customer is entitled to act." But the banker may show that a certain entry was made erroneously, provided that the customer, relying upon the accuracy of the record, has not been adversely affected through the error, *e.g.*, when an uncleared cheque is entered in the pass-book as cash, the banker can show the real nature of the entry and have the error rectified. If the banker has erroneously shown a larger credit balance in the pass-book than is actually due to the customer, who, relying upon the accuracy of the pass-book record, draws a cheque accordingly, the banker has no right to dishonour such a cheque. If he does so, he may be held liable to pay damages for the wrongful dishonour of his customer's cheque (*Holland* v. *Manchester and Liverpool District Banking Co., Ltd.* (1909), 25 T.L.R. 386). In determining this question of fact, a great deal depends upon whether the customer was led through the erroneous entry to act in a manner in which he would otherwise not have acted and whether such action has been to his detriment.

When a banker discovers a mistake of this nature he should inform his customer, and, until the matter has been cleared up honour cheques that may be drawn against the balance wrongly shown.

It has been held, that a fictitious entry made by a bank employee cannot be relied upon by a customer who has not received notice of the same, or

acted so as to alter his position (*British and North European Bank* v. *Zalzstein* (1927), 2 K.B. 92).

ENTRIES FAVOURABLE TO BANKER—As regards the effect of entries made in the pass-book favourable to the banker, it is not possible to define with full confidence the extent to which the customer is bound by them, but recent rulings enable us to make the following general observations :—

CUSTOMER'S RESPONSIBILITY—Where the customer has so acted, as to render the entries a settled or stated account, and is guilty of negligence in regard to them, and as a result, the banker's position is affected in a manner disadvantageous to him, probably the customer will not be allowed to dispute the accuracy of the entries. It is still doubtful what acts or omissions on the part of the customer are tantamount to settlement of account, or to negligence in regard thereto. But it is certain, that the receipt of the pass-book by the customer, showing the balance of his account with or without the cheques honoured and the return of the pass-book to the bank by him without taking exception to the entry under dispute, does not constitute such negligence as will preclude him from disputing the same. In other words, the customer is not bound to examine the entries in his pass-book and the banker, upon receipt of the pass-book returned by his customer without objection from time to time, is not entitled to infer that the latter has accepted the entries as correct (*Chatterton* v. *London and County Bank*, Times (London), 21st January, 1891).

As against a number of decisions on this point, unfavourable to the banker, the following passage from the judgment given by the majority in the Court of Appeal in the case of *Vagliano Bros.* v. *Bank of England* (1891), 23 Q. B.D. 243, is well worth noticing :

"There is another point to be considered. The plaintiff from time to time received from the bank his pass-book, with entries debiting the payments made, for which the bank sent the bills as vouchers, which were retained by the plaintiff when he returned, without objection, the pass-books. It was contended that this was a settlement of account between him and the bank, and that he had been guilty of such negligence with respect to the examination of the vouchers as would have prevented him from being relieved from the settlement of account. But there was no evidence to show what, as between a customer and his banker, is the implied contract as to the settlement of account by such a dealing with the pass-book, or that, having regard to the ordinary course of dealing between a banker and his customers, the plaintiff had done anything which can be considered a neglect of his duty to the bank or negligence on his part."

In *Bala Krishna Pramanik* v. *Bhowanipore Banking Corporation Ltd.* (1932), 59 Cal. 662, where a customer used intelligently to examine the entries in his pass-book and dispute or call for explanation regarding them it was held that he could not afterwards complain about entries in the pass-book, where compound interest at monthly rates was being charged and debited. It was considered that continued and persistent acquiescence of this character gave rise to a presumption that there was an agreement between the customer and the bank to charge compound interest, as was done in this case.

POSSIBLE LEGAL RECOGNITION—It will be seen from what has been said above, that, if the bankers succeed in establishing a custom, the courts may

give legal recognition to the same. When the case cited above went before the House of Lords, Lord Halsbury was in favour of the bankers, and said, "The false documents were paid, duly debited to the customer, and duly entered in his pass-book, and, so far, as the banker could know or conjecture, brought to his knowledge on every occasion upon which the payment was made and the bills were returned." Again he says, "Was not the customer bound to know the contents of his own Pass-book?"

In no case is a banker justified in withholding from his customer any amount received for his credit, but omitted to be shown in his pass-book, on the plea of acquiescence on the part of the customer.

Closing an Account.

DETERMINING FACTORS—The following are the circumstances which will either necessitate a banker closing the account of his customer or justify the stoppage of the operation of the account :—

1. Notice given by the customer to the banker of his intention to close the account.
2. Death of the customer.
3. Customer's insanity.
4. Customer's insolvency.
5. Order of the Court, *e.g.*, a garnishee order.
6. Notice received by the banker of an assignment made by the customer of his credit balance.

RIGHT TO CLOSE THE ACCOUNT—Just as a customer has the right to discontinue his dealings and close his account with a particular banker, the latter also has the right to say, whether or not, he would like to continue to have a particular person as his customer. A customer may close his account, (1) if he is not agreeable to the terms such as the rate of interest and the bank charges, (2) if he cannot get such facilities as are offered to him by some other banker, or (3) when his confidence in the bank is shaken. The bank may be unwilling to continue to act as banker to a particular person, either because it finds that the person is no longer a desirable customer, as for example, when he is convicted of forging cheques or bills, or if he is in the habit of drawing cheques without providing the necessary funds for meeting them, or because his account is not a paying one. For a short method of the analysis of depositors' account, used by the Federal Reserve Bank of New York, see Appendix C, *post.*

ADEQUATE NOTICE BY THE BANKER—Although a customer is generally not bound to give any special notice of his intention to close his account with a particular bank, the banker cannot do so without giving a sufficient notice to the customer. The bank should honour cheques drawn by the customer, before the receipt of the notice by him, if they satisfy the conditions stated in an earlier part of this book. As to what is an adequate notice depends upon the circumstances of each case such as the nature of the business, etc. (*Prosperity Ltd.* v. *Lloyds Bank Ltd.* (1923), 39 T.L.R. 372). The facts of the case were as follows:—Soon after the formation of the plaintiff company, the manager of the defendant bank at the Victoria Street branch was approached with a view to the opening of a banking account. The "snowball" scheme of insurance was explained to him in detail :—

On payment of £1 15s, a subscriber to the scheme would receive a book containing ten application forms, valid for one year. Each new subscriber obtained by the first subscriber would fill up one of the application forms and go through the same process. The first subscriber would thus create a 'family' of subscribers, termed 'descendants'. The maximum number (in theory) of 'descendants' from the first subscriber would be 10,000,000 and each 'descendant would be a subscriber introduced by the first subscriber, with the result that the first subscriber would be credited with 2s. commission in respect of every one of his 'descendants' and each of the members of the 'family' would himself become the originator of a similar family. When the sum of £8 consisting of these commissions was placed to the subscriber's credit, that amount would be paid to the insurance company associated with the plaintiff company as the single premium for a ten years' endowment assurance of £10 in fa our of the subscriber, and the next £8 would secure a second £10 policy and so on, but of the 35s. paid by a subscriber, 16s. would be credited to him towards payment of the policy premiums, 14s. would be applied in paying the 2s. commissions, and 5s. would be paid to the plaintiff company for expenses and profit.

On behalf of the defendants, he agreed to open an account, to receive applications from subscribers to the plaintiff company, and to allocate the moneys received from them in accordance with the rules of the plaintiff company. On 14th February, 1923, a letter was sent by the head manager of the defendants to the plaintiffs, telling them that the defendants would cease to act as bankers to the plaintiffs after 14th March. At the time of going to court there was a sum of about £7,000 deposited to the credit of the plaintiff. Justice McCardie, who gave the judgment, had no doubt that the manager of the defendant bank was fully aware of every detail of the scheme and that he agreed to open the account with a full knowledge of its documents and of the course of dealing and business to be followed by the plaintiff company. The scheme was launched after the opening of the bank account. At the time when the defendants proposed to close the account, there were scattered in various parts of the world, a number of application forms and pamphlets and rules of the company and those rules provided, with the knowledge of the Lloyds Bank, that the moneys payable under the scheme, *i.e.*, the 35s, of each subscriber, should be paid into the Lloyds Bank. As the bank was to keep the moneys in a certain way, upon certain accounts, and to deal with them in a specified manner, it made itself a prominent and important essential of the scheme. Having regard to the knowledge and approval in the first place of this scheme, by the Lloyds Bank and having regard to their knowledge as to the extent to which the credit balance of the company was interwoven with the "snowball" scheme, the bank's notice to close the plaintiffs' account amounted to a repudiation of the contract. In the court's opinion, a month's notice by the defendants to discontinue the account was not, in the circumstances of the case, sufficient.

Undesirable and obstinate customer—When a customer fails to close the account even after the expiry of the reasonable notice given to him the banker can close his customer's account by returning the amount at his credit and ask him to return the unused cheque forms supplied to him. However, to avoid chances of litigation he should refuse to accept more credits for the account of that customer and await the exhaustion of the cheque forms already supplied to him.

Death of customer—The death of a customer terminates the authority given by him and theoretically operates as an automatic countermand of outstanding cheques. It is, however, the notice of the death that revokes the authority to pay cheques.

Customer's insanity—The customer's insanity should automatically terminate the authority given to the banker to act as his customer's agent (*Yonge* v. *Toynbee* (1910), 1 K.B. 215) but it is contented that a banker's position as a mandatory is not necessarily governed by the same considerations as affect his agency. It is, therefore, considered that banker's authority to honour his customer's cheques is only revoked by notice of insanity. Bankers treat their customers as sane unless there is a fairly conclusive evidence in support of customer's insanity. Courts usually appoint committees of the lunatics and banks can deal safely with such committees.

Insolvency or winding up—Insolvency in the case of ordinary customers and winding up in case of corporate customers terminate the authority of the banker to pay cheques or to accept or honour bills or to take any other action on behalf of such customers. The banker is bound to transfer to the official assignee, receiver or liquidator, the credit balance if any, in the account of his insolvent customer. We have already dealt with the acts of insolvency upon which a petition for adjudication can be founded. The banker, therefore, theoretically cannot deal with such a customer's property or honour his cheques if he has notice either of the petition or an available act of bankruptcy on the part of his customer as by virtue of the doctrine of "relation back" the title of the official assignee will not commence from the date of the order of adjudication but will "relate back" to the first available act of bankruptcy.

Garnishee orders—If a banker is served with a prohibitory order in garnishee proceedings in execution of a decree of a civil court, such an order necessarily precludes the banker from honouring the customer's cheques after the service of the order. It depends upon the terms of the order whether the whole credit balance of the customer is garnished or whether it is applicable to a part of the account If the prohibitory order does not specify the amount then the order will apply to the whole account. If, on the other hand, the banker is prohibited from parting with a named sum he need only ear-mark such a sum and may honour the customer's cheques out of the balance.

Assignment of an account—If a customer assigns his credit-balance to a third party, who gives notice of the assignment to the banker, the latter must pay the money to the assignee, the assignor having no right over the balance after assignment. If the banker, however, receives no notice of the assignment he will be protected if he goes on honouring the customer's cheques, as the assignee's title as against the banker is not complete without notice.

Right to the credit balance in the case of customer's death.

Normally, if an account is closed by a banker upon receipt of a notice regarding the death of a customer, the duly appointed legal representative of the latter is the proper person to whom the credit balance should be paid. No one else has any claim against the banker in respect thereof, unless it can be shown that the balance represents trust money to which the claimant is entitled, or that in the matter of that account, the deceased customer was really an agent of his principal, the claimant. With a view to making the position clear we give below some cases:—

The plaintiff, who had been the farm bailiff of Lord De L'Isle, after his employment in that capacity had ceased or been modified, received a cheque for £180 in payment for wheat which he had sold on account of his employer,

while acting as bailiff. Lord De L'Isle wrote instructing the banker to hold the balance of £128 for his own account. It was held that the plaintiff could recover the sum and that Lord De L'Isle had no claim (*Tassel* v. *Cooper* (1850), 9 C.B. 509).

In the case of *Societe Coloniale Anversoisev. London and Brazilian Bank* (1911), 2 K.B. 1024 (1030), the plaintiffs had provided moneys for working their mines in Brazil by remittances sent to the London and Brazilian Bank, the defendants, for the plaintiffs' account, upon which a person whom the bank knew to be their agent was to draw for agency purposes. The plaintiffs dissolved that agency and requested the bank to hand over the balance standing to the credit of their account to another of their agents. The bank refused and plaintiffs claimed the amount. Judgment was given in plaintiffs' favour because the contract was between the bank and the plaintiffs and not with the agent and the banker is justified in refusing to recognize the claims of a third party that the money held in an ordinary account in the name of a customer is held in trust for him. The third party may, if he chooses, file a suit against the customer for a declaration of his rights but the banker is entitled to ignore his claims without the order of a competent court (*Tassel* v. *Cooper* (1850), 9 C.B. 509).

To DEMAND PRODUCTION OF PROBATE OR LETTERS OF ADMINISTRATION —The banker should demand production of the probate or letters of administration, which will specify the person to whom he can safely pay the balance of the deceased customer in his hands. By paying the balance standing to the credit of the deceased customer to one of the several executors or administrators, the banker is discharged.

SET-OFF—A set-off must be in the form of a cross-claim for a liquidated amount and it can be pleaded only in respect of a liquidated claim. Both the claim and the set-off must be mutual debts, due from and to the same parties, under the same right. A claim by a person in a representative capacity cannot be set-off against a personal claim. Thus, if *A* claims Rs. 500 as the balance due to him from his banker, while as trustee of *B*, *A* owes to the banker Rs. 300, no set-off can be claimed by the banker. Even a claim against the estate of a deceased customer cannot be set off against a debt, which was due to the customer from his banker, during the former's life-time. Whether the accounts are with one or more offices of the banker, it does not materially affect the position in any way.

Recovery of Money paid by Mistake.

LEGAL POSITION NOT WELL DEFINED—Before closing this chapter, it will not be out of place to consider the question of money paid by mistake. It may be stated, at the outset, that the law with regard to it can hardly be said to be in a settled, or a well-defined condition. If a banker sometimes makes a payment by mistake, he naturally desires to rectify the mistake and recover the amount if possible. As to what circumstances preclude the right of recovery does not seem to be clear, as far as the judgments given in decided cases go. However, certain general principles, which determine whether or not money paid by mistake is recoverable, are given below :—

MONEY RECEIVED *mala fide* RECOVERABLE—*Firstly*, it should be noted that, if a person receiving payment is aware of the fact that he is not entitled to the same, the payer's right to claim the amount from him is indisputable.

On the other hand, if the payer is subject to a duty as against a payee to inform him of the true state of the account, which is in effect a duty not to make a mistake of fact in that regard and the payee's position is altered, the money cannot be recovered back. In *Skyring* v. *Greenwood* (1825), 4 B.C. 281, an army paymaster, the plaintiff, overpaid through a mistake of fact the defendant, a major in the army. The defendant was held entitled to assume that the plaintiff had performed his duty and having himself spent the money overpaid, on the assumption, he was held not liable to refund to the plaintiff. So, again, in *Holt* v. *Markham* (1923), 1 K.B. 504, a very similar case where an air-force officer was overpaid through a mistake in the interpretation of certain war office regulations it was held in the first place that this was a mistake of law but, even if it was a mistake of fact, yet the plaintiff was estopped. The payer in that case also was under a duty to the payee almost exactly similar to that in *Skyring* v. *Greenwood*. In *Deutsche Bank* v. *Beriro & Co.* (1895), 73 L.T. 669, *A* gave a bill to defendants for collection and defendants gave it in turn to the plaintiffs for a similar purpose. Plaintiffs informed the defendants that the bill was paid and sent a cheque to them in payment. Defendants in turn informed *A* about the bill being met and gave *A* credit in the account. The bill was not paid in fact. It was held that there was a contractual duty on the part of the plaintiffs not to make a mistake and the defendants were held not liable to refund the amount. In *Standish* v. *Ross* (1849), 3 Exchange 527, where there was no breach of duty by the payer, the court held that where money is paid over under an ordinary mistake of fact, it could not be any bar to its recovery "that the defendant had applied the money in the meantime to some purchase which he otherwise could not have made and so could not be placed in *status quo*."

MISTAKE TO BE OF FACT—*Secondly*, the mistake, under which the money has been paid, must be one of fact and not of general law, so as to entitle the banker to recover the same." For instance, if money due to Kishori Lal has been paid to Prag Nath, the mistake, underlying the payment, is one of fact, and, therefore, the amount is recoverable. On the other hand, if a person happens to pay a debt in ignorance of the law of limitation, the money thus paid cannot be recovered. In *Holt* v. *Markham* (1923), 1 K.B. 504, where Messrs. Holt & Co., the army agents overpaid £744 into defendant's account owing to a misapprehension regarding certain war office orders, it was held, that the payment was not made owing to a mistake of fact. When there is a mistake of fact and law as well, according to Wright J. in *Home and Colonial Insurance Co.* v. *London Guarantee & Acc. Co.* (1923), 34 Com. Cases, 163, the money is not recoverable, unless it can be proved that it was the mistake of fact which led the plaintiff to make the payment. However, the tendency seems to be towards a liberal view, that a mistake of fact is such as would ordinarily include a mixed question of fact and law.

MISTAKE TO BE BETWEEN THE PARTY PAYING AND THE PARTY RECEIVING MONEY—*Thirdly*, the mistake must be between the party paying and the party receiving money. Thus, when the mistake lies between the banker and his customer, *i.e.*, the drawer of the cheque, the banker cannot recover money paid by mistake to an innocent holder. For instance, if a banker, by misreading the balance at the credit of his customer's account, pays a cheque and afterwards discovers the mistake, the banker cannot recover the money from the recipient even if the mistake is discovered immediately after the money is handed and before the recipient has left the premises (*Chambers* v. *Miller*, [1862] B.C.B.N.S. 125). In *Well Blundell* v. *Synott* (1940), 2 All.

E. R. 580, the term "mistake as between the parties" was subject to a very close analysis and the conclusion reached was that when the payer was under a legal obligation to pay, the mistake must be deemed to be between the parties. The facts of that case were that plaintiffs were first mortgagees of certain property of which the defendant was the second mortgagee. The mortgagor having defaulted, the plaintiffs exercised their power of sale. The proceeds of the sale amounted to £6595. The plaintiffs were entitled to retain out of the fund what was due to them, namely £6000 as principal and £294 as interest. They were, therefore, bound to account to the defendant for the surplus. By mistake the plaintiffs paid to the defendants the sum of £413 though the surplus in their hands was only £301. The mistake arose out of a miscalculation of the interest. The plaintiffs having discovered the mistake within ten days, claimed £112 as moneys paid under a mistake of fact. The defendant contended that this was not a mistake between the parties because it concerned the amount of the interest due to the plaintiffs from the mortgagor, with which mistake the defendant had nothing to do The court held that the cases which seem to lay down this principle turned on the fact that the payer in those cases was under no obligation to pay to the payee. For instance, in *Chambers* v. *Miller* (p. 190 *ante*) supposing the banker had made no mistake whatsoever, still the payee was not entitled to demand payment from the payer, and if the latter nevertheless pays and there happens to be a mistake, it is not one between the parties. But where the mistake is one affecting obligation, then there is a mistake *inter partes*. On the point of estoppel, the court held that the plaintiffs were not subject to a duty as against the defendant not to make a mistake (*Skyring* v. *Greenwood*) and as there was no other circumstance operating as a bar to recovery, the claim of the plaintiffs was decreed. Before 1926 there was a great body of authority in favour of the view that, when a person to whom money had been paid by mistake had been misled by the payer's conduct and on the faith of that conduct had acted to his own detriment, the payer could not in law insist on repayment.

In *R. E. Jones Ltd.* v. *Waring and Gillord Ltd.*, [1926] A.C. 670, the House of Lords set the controversy at rest by upholding the principle of *Kelly* v. *Solari* (1841), 9 M.W. 54, to the effect that however grossly negligent a payer may be and whatever laches he may have been guilty of, he is entitled to recover if he had paid the money under a mistake of fact, provided always, that he owes no duty to the payee not to make a mistake. As already explained, negligence in the sense of carelessness is immaterial in law unless there is a duty or obligation to take care.

EXCEPTIONS—No recovery of money, paid by mistake, is permitted in the following cases :—

1. When it is paid on a negotiable instrument.

2. When the money was paid to and received by the payee, not as a principal, but as an agent, and the agent had paid the money over to the principal or had otherwise materially prejudiced his position by relying on the payment, before he received notice of the mistake.

PAYMENT ON NEGOTIABLE INSTRUMENT—As far as the first point is concerned, the judgment in *Cocks* v. *Masterman* (1829), 9 B. & C. 902, enunciated the principle that the holder of a bill is entitled to know on the day on which it becomes due, whether it will be honoured or dishonoured, and

that if he receives the money and is allowed to keep it during the whole of that day, the party who paid it cannot recover it. In *London and River Plate Bank* v. *Bank of Liverpool* (1896), 1 Q.B. 7, Mathew J. expressed the view, that money paid on a negotiable instrument to an innocent holder could not be recovered, if such an interval of time had elapsed as to prejudice his rights against previous parties. The principle underlying the decision is that the holder of a bill has a right to know definitely the fate of the bill when due. His right of recourse against prior indorsers depends upon the bill being dishonoured and due notices of dishonour being given to them (section 35 of the Indian Negotiable Instruments Act). If the bill is honoured in fact, the liability of the indorser does not come into existence at all, and the holder, if he is compelled to refund, would be materially prejudiced. This principle will not apply where there are no prior parties. Accordingly in *Imperial Bank of Canada* v. *Bank of Hamilton*, [1903] A.C. 49, where money was paid under a mistake and notice was given to the payee the next day, it was held that the money was nevertheless recoverable, as the payee was in no way prejudiced.

In *Raghunath Rithkaran* v. *The Imperial Bank of India* (1925), 27 Bom. L. R. 1229, 1236, the plaintiffs, had by mistake accepted a *hundi* which was not drawn upon them and had, in the usual course, paid the amount to the defendant: on discovering the mistake about a year later they claimed the amount from the bank. The Bombay High Court, while upholding the judgment of the Chief Judge of the Small Causes Court, who had dismissed the plaintiffs' claim, observed, that the fact that the plaintiffs accepted the position as drawees of the *hundi*, established for the time being mutual relationship between themselves and the bank, which fact cast upon them the duty to inform the bank, within a reasonable time, that they had accepted that position under a mistake of fact. The gross carelessness on the part of the plaintiffs in not detecting the mistake immediately and in not intimating within a reasonable time, after they had discovered the mistake, to the defendants, disentitled the plaintiffs to recover the money from the bank. This view seems to be inconsistent with the authoritative pronouncement of the House of Lords in *Warings* v. *Jones* already referred to.

Exception does not extend to forged and other non-negotiable instruments—It should be noted, that this exception to the general rule regarding the recovery of money paid by mistake, does not extend to cases where either the instrument does not possess the characteristic of negotiability or where the material element, supposed to be genuine, turns out to be a forged one. Thus, the existence of a forged signature, whether of the drawer or indorser on a bill or cheque, is a mistake of fact between the person paying the money and the person who presents the instrument and receives payment. Thus, if the drawer's signature on a cheque turns out to be forged and if there be no indorsement, such an instrument cannot be regarded as a negotiable one. However a document, which is originally sham as would be the case with a cheque bearing a forged signature of the drawer, can become a negotiable instrument, at any rate, by estoppel, when a person can acquire some right to it. For instance, if the cheque referred to above, is transferred by the payee to a third person, the latter can treat it as a negotiable instrument, as far as the former is concerned, and, therefore, the right to recover will not apply to such an instrument. However, where the instrument, is a mere sham, it may be asked whether there is any exception to the rule, where the payment is made by the banker, relying upon his customer's signature. The

practical utility of this question is doubtful, as generally, such instruments either bear some indorsement, or if the payment is made to the fraudulent party who would not, even if found, be worth the banker's while to proceed against. Although, as between a banker and his customer, the former is bound to know the signature of the latter, the paying banker owes no such duty to the holder of a cheque. However, in cases of gross carelessness on the part of the banker, as between him and the person who has received the payment thereby, it would be unfair to allow the banker to recover the money paid by him. For instance, if there is a glaring dissimilarity between the signature on the cheque and the specimen signature supplied to the banker, the banker's failure to compare the two signatures is considered a departure from ordinary practice, and therefore, he cannot be allowed to recover the amount received by an innocent person.

THE OTHER EXCEPTION.—The other exception to the rule regarding the recovery of the money is fairly simple. If the money has been innocently received by an agent who had, before receiving notice of the mistake, paid it over to his principal or otherwise materially and irrevocably altered his position, the recovery from the agent cannot be allowed.

WHETHER MONEY RECEIVED AS PRINCIPAL OR AGENT.—The first question to be considered in such cases is whether the money has been received by the person to whom it is paid, as an agent or principal. The mere fact, that by a payment of money into a bank for the credit of a certain customer, the bank had undertaken to honour that customer's cheque, is not held to be a valid defence to a claim for recovery by the party, who had paid the money to the bank by mistake. (*Admiralty Commissioners* v. *National Provincial Union Bank*, 38 T.L.R. 492). In *Kleinwort* v. *Dunlop Rubber Co.* (1907), 23 T. L.R. 696, one Mr. Brandt served Dunlop Rubber Co., with a notice that Mr. Kramrisch had assigned to him £3,000 which the Dunlop Rubber Company owed to Kramrisch, who also directed the Dunlop Rubber Co. to pay the money to Mr. Brandt. The company had a previous general order from Kramrisch to pay money due to him, to Kleinworts who were financing him in various transactions. The Company, through the mistake of one of their officers, acting on the general instructions of Kramrisch, paid the amount of £3,000 by cheque to Kleinworts. Brandt filed a suit against the company for the assigned debt, and obtained judgment in his favour. Thereafter Dunlops brought a suit against Kleinworts for £3,000 paid to them by mistake of fact. One of the most important points at issue in the case, was, whether Kleinworts had received the money as agents for Kramrisch or as principals. The Court held that in receiving money, Kleinworts had acted as principals, and, therefore, they were liable to repay. The following remarks of Lord Atkinson, who reviewed the previous decisions on the point, make the position quite clear :—

"Whatever may in fact be the true position of the defendant in an action brought to recover money paid to him in mistake of fact, he will be liable to refund it if it be established that he dealt as a principal with the person who paid it to him. Whether he will be liable if he dealt as an agent with such a person will depend on this, whether, before the mistake was discovered, he paid over the money he received to the principal or settled such account with the principal as amounts to payment or did something which so prejudiced his position that it would be inequitable to require him to refund."

It is quite clear from the extract given above, that, if the defendants had received the money as agents and had done something to prejudice their position, the judgment would not have been given against them.

No lien or claim for a set-off when money is paid by mistake by a third person—It must also be noted that a banker to whom money is paid by mistake, cannot set up a lien or claim a set-off, which he can otherwise do against his own customer, even where the money is paid to the banker as an agent for that customer. Lien can only extend to the customer's money or securities, but not to the money which is paid by a mistake of fact by a third person, as it belongs to him and not to the customer.

CHAPTER VIII

EMPLOYMENT OF FUNDS

We have, so far, confined our attention mainly to such functions of the banker as enable him to obtain funds. We shall, hereafter, proceed to consider the principles of law and the practice pertaining to the employment of his funds. Before dealing with the different forms in which the banker's funds are employed profitably, it will not be out of place to consider the purposes for which banks keep their reserves and the considerations governing the size of reserves.

RESERVE—From the preceding chapters it must have been clear, that, in India before the war the liabilities of a banker were largely in the form of deposits payable after the expiry of a period. In addition to the funds required for meeting the demands of the depositors who wish to withdraw their deposits—fixed and current, bankers have to keep funds for meeting the requirements of such customers, as may want accommodation in one form or another. It is, therefore, necessary for a banker to keep both in his own vaults, as well as with his bank,—generally the central bank of the country—such amounts as he may consider sufficient for his day-to-day requirements. These funds are known as cash reserve and are regarded as his first line of defence in times of trouble. The following table shows the percentages of cash to deposits held by certain classes of banks, in India.

Percentage of cash to Liabilities on Deposits of the several classes of banks in India on 31st December, each year.

	1933	1934	1935	1936	1937	1938	1939	1940	1941	1942	1943
(I) Imperial Bank of India.	23	23	25	11	17	11	13	26	14	14	25
(II) Exchange Banks:											
(A) Banks which are doing a considerable portion of their business in India.	12	10	15	18	19	13	8	17	10	10	12
(B) Banks which are merely agencies of large banking corporations, doing a major portion of their business abroad.	6	13	19	10	10	7	10	23	15	11	12
The percentage figures of the Exchange Banks have been calculated on their deposits and cash balances in India only.											
(III) Indian Joint Stock Banks:											
(A) Banks having Capital and Reserve of Rs. 5,00,000 & over	15	15	23	16	17	14	17	23	19	23	24
(B) Banks having Capital and Reserve between Rs. 1,00,000 and less than Rs. 5,00,000.	17	14	16	19	16	15	15	20	23	29	32

RESERVE PROBLEM—The problem of reserve is one of the most difficult questions which confront a banker. The profits of a commercial bank depend primarily on the utilization of its funds, while its ability to meet the demands of its customers is closely related to the reserve he keeps. The success of a bank is, therefore, largely dependent on the one hand, upon the capacity of its reserves to meet the demands that are likely to be made on it, and on the other, on its reserve not being unnecessarily too large, because a reserve, necessary though it is, is after all money lying idle and is consequently unremunerative. No definite rules can be laid down as to where to strike a balance between reserves which are unnecessarily large and those which are dangerously small: reliance has to be placed, of course, on the guidance offered by experience and sound common sense. It is difficult to lay down any hard and fast rules regarding the reserve a bank should keep, because not only does the amount of cash required by it vary from time to time, but the needs of different classes of customers also differ at the same time. However that may be, it is still possible to foresee some of the demands.

DEMANDS THAT CAN BE FORESEEN—By looking at the fixed deposits and bills payable diaries and the finance book, a banker can easily estimate the maximum amount that may be required at any time for meeting the demands with regard to these. As regards the fixed deposits maturing during a particular week or month, he may not be sure what percentage will be withdrawn on maturity, but in the absence of any special reason for the loss of public confidence in the bank, most of them may be expected to be renewed. To estimate his needs in this respect the banker will rely, as has been said, on his experience. If, however, the banks of the same status or government raise their rates of interest on short term borrowings, fixed deposits of a banker may be affected unless he too also agrees to offer higher rates of interest. For instance, as a result of the issue of postal cash certificates, giving a yield of 6 per cent. free of income-tax, Government attracted some years ago fairly large amounts of money, a portion at least of which would otherwise have flown into the vaults of the banks. Similarly, the issue of treasury bills, yielding attractive rates of interest, helped to divert funds from banks to the Government. Again, some of the demands are more or less regular. For example, a banker in England, knows that on every Saturday, his customers, who employ labour, require certain sums of money for the payment of wages. Similarly, in India, where salaries and wages are usually paid once a month, demand for funds for their payment, generally in the first week of every month, may be more or less accurately gauged. There are certain other periodical demands, for which the bankers are usually prepared. For instance, bankers in England know beforehand, that they have to pay out large amounts of cash before the Bank Holiday in August, and the Christmas holidays in December. In certain parts of India, bankers have to meet a large demand for cash just before the Diwali—an important Hindu festival and the New Year's day of the Indian business community. Sometimes, it is also arranged with customers keeping large balances, that they should inform their bankers beforehand, if they wish to withdraw at one time amounts exceeding rupees one lakh or so.

Important Factors Governing Cash Reserve.

With regard to other demands, we give below the principal circumstances which influence the reserve requirements.

HABITS OF THE CUSTOMERS, AND BUSINESS CONDITIONS OF THE LOCALITY—In a general way it may be said, that the amount of reserve required

by a bank depends upon the habits of the customers and the business conditions of the locality, which the bank is serving. Thus, in a manufacturing and commercial community, where exchanges are numerous and rapid, it might be necessary to maintain a relatively larger reserve than that in an agricultural community, among the members of which the exchanges are less frequent. It is for this reason, that the reserve requirements under the Federal Reserve Act, 1913, differ for banks in different classes of cities and towns, *vide* 198, *post.* On the other hand, in an agricultural country like India, the demand for currency during the busy season for financing certain crops may be so large as to require the maintenance of a larger reserve than at other times.

USE OF CHEQUE CURRENCY—Where the cheque currency is popular, the need for hand to hand currency is less and consequently smaller reserves will suffice, because payments for these cheques will, to a very large extent, be made by transfer entries in the books of the bank. For example, if Mr. G. W. Katrak draws a cheque in favour of Mr. R. N. Desai, where both of them are customers of one and the same bank, no cash will be required for the purpose of honouring Mr. Katrak's cheque. Even if they happen to be customers of two different banks, no cash may actually be required, because the cheque may be paid by means of a credit entry in the books of the paying bank, made in favour of the collecting bank.

BANKERS' CLEARING HOUSE—The third important factor which affects the reserve to be kept by a bank, is, whether or not, there is a bankers' clearing house in the locality where the bank is carrying on its business. As, in a city, which has a bankers' clearing house, most of the cheques pass through the clearing house, a banker is not required to find funds for all the cheques drawn upon him and held by other bankers: he has only to provide for the difference between the respective amounts of cheques drawn upon him and those drawn upon other banks and held by him, if, on the balance, he is found to be a debtor. Thus, if, on a particular day a bank in Bombay has to honour cheques for rupees five lakhs, while it has to receive payments for cheques in its hands worth rupees four lakhs drawn upon other banks in the city, it has to make arrangements for payment of the balance of only rupees one lakh and not rupees five lakhs, as would probably be the case if there were no bankers' clearing house in Bombay, because, in the absence of a bankers' clearing house, the bank may not be able to collect cheques drawn on other banks and held by it at the same time that it is required to honour the cheques drawn upon it.

NATURE OF ACCOUNTS—If a large majority of the current accounts are of a fluctuating nature, as is the case with the accounts of share-brokers, cotton merchants, and bullion dealers, the banker will require a comparatively larger reserve because there is the chance of most of them withdrawing the major portions of their balances at a time, when there are heavy fluctuations in the prices of shares, cotton and bullion. Similarly, city banks, especially those which hold deposits and reserves of other banks should ordinarily maintain a larger percentage of reserve than small local banks.

SIZE OF AVERAGE DEPOSITS—A bank which has only a few large deposits has to keep a larger reserve than a bank with numerous small accounts, because the larger the number of clients of a bank, the less is the likelihood of any concerted movements towards a withdrawal of deposits. For instance,

if a bank has a comparatively small number of accounts of cotton merchants, or mills with large balances, the banker may have to meet heavy demands of these clients in the cotton season with the result that, unless he has a large reserve, he will find it difficult to meet the demands.

THE NATURE OF ADVANCES AND AMOUNT OF BILLS DISCOUNTED—The reserve a banker should keep is also affected by the consideration of the amount of money invested by him in the discount of commercial paper. If he uses a large portion of his surplus funds in discounting good bills, he should be able to manage with a smaller reserve than another banker who invests his funds largely in the form of loans, because the former, on account of having utilized a large sum of money in discounting commercial paper, can, in case of need, easily convert some of the bills in his vaults into cash, by re-discounting them with the central banking institution.

THE AMOUNT OF RESERVE KEPT BY OTHER BANKS IN THE LOCALITY—The size of cash reserve to be kept by a bank is further determined by the amount of reserve kept by other banks in the locality. If some banks keep large reserves and thus win public confidence, the other banks may also have to increase their reserve ratio with a view to ensure for themselves the same prestige, as also not to be outdone by the rival banks in their bid for popularity just in the same way as when one country increases its army or navy, other countries of the same status follow suit, so that the relative strength between the rival nations and the balance of power between them may be maintained.

MINIMUM RESERVE REQUIRED BY LAW IN U. S. A.—In U. S. A., the following minimum percentages of reserve have been fixed with effect from Oct. 6, 1942:

1. Central Reserve City Banks: 20% of 'Demand' deposits and 6% of 'Time' deposits.

2. Reserve City Banks: 20% of 'Demand' deposits and 6% of 'Time' deposits.

3. Country Banks: 14% of 'Demand' deposits and 3% of 'Time' deposits.

IN INDIA—Section 42 (1) of the Reserve Bank of India Act (II of 1934), requires every bank included in the second schedule annexed thereto, to maintain a balance with the Reserve Bank of India, the amount of which shall not at the close of business on any day, be less than five per cent. of its demand liabilities and two per cent. of its time liabilities in India, as shown in the return referred to in the next sub-section of the said section. It is laid down that for the purposes of this section, liabilities shall not include the paid-up capital or the reserves, or any credit balance in the profit and loss account of the bank or the amount of any loan taken from the Reserve Bank.

Section 42 (2) of the Reserve Bank of India Act, 1934 (II of 1934), further lays down that:

> Every scheduled bank shall send to the Central Government and to the Bank a return signed by two responsible officers of such bank showing:
>
> (a) the amounts of its demand and time liabilities, respectively, in India,
>
> (b) the amounts of its demand and time liabilities, respectively, in Burma,
>
> (c) the total amount held in India in currency notes of the Government of India and bank notes,

(*d*) the total amount held in India in Burma notes,

(*e*) the total amount held in Burma in currency notes of the Government of India and bank notes,

(*f*) the total amount held in Burma in Burma notes,

(*g*) the amounts held in India in rupee coin and subsidiary coin, respectively,

(*h*) the amounts held in Burma in rupee coin, subsidiary coin and Burma coin respectively,

(*i*) the amounts of advances made and of bills discounted in India respectively,

(*j*) the amounts of advances made and of bills disounted in Burma, respectively, and

(*k*) the balance held at the Bank,

at the close of business on each Friday, or if Friday is a public holiday under the Negotiable Instruments Act, 1881, at the close of business on the preceding working day; and such return shall be sent not later than two working days after the date to which it relates:

Provided that where the Bank is satisfied that the furnishing of a weekly return under the sub-section is impracticable in the case of any scheduled bank by reason of the geographical position of the bank and its branches, the Bank may require such bank to furnish in lieu of a weekly return a monthly return to be despatched not later than fourteen days after the end of the month to which it relates giving the details specified in this sub-section in respect of such bank at the close of business for the month.

Clauses (*b*), (*d*), (*e*), (*f*), (*h*), and (*j*) have since been deleted by Ordinance IX of 1942, 9th February 1942.

CASH RESERVE OF JOINT STOCK BANKS OTHER THAN THE SCHEDULED BANKS—Section 277L of the Indian Companies Act, 1913 (VII of 1913), imposes a duty on every banking company other than those included in the second schedule to the Reserve Bank of India Act, 1934 (II of 1934), to maintain, by way of cash reserve, in cash, a sum equivalent to at least one and half per cent. of its time liabilities and five per cent. of the demand liabilities; and imposes upon such companies the obligation of submitting to the Registrar, before the tenth day of every month, statements containing details of the time and demand liabilities and cash on every Friday in the preceding month.

Proposal of the Reserve Bank.

It appears that the above legal requirements are not considered to give adequate protection to the interests of the depositors of small banks some of which are considered to be overtrading by investing as much as 90 per cent. of their assets in loans *et cetera*, by borrowing against their holdings of Government securities to the hilt. It is, therefore, suggested that the proposed banking legislation should provide for a minimum of 25 per cent. of time and demand liabilities of a bank to be kept in cash, bullion or trustee securities as defined by the Indian Trusts Act, excluding immoveable property. It may be remarked that the larger banks normally keep more than the said percentage in cash and government or semi-government securities. It is further proposed that such minimum reserve should not be used as a security for advances even from the Reserve Bank of India. With a view to provide for genuine emergencies such as a general run on banks or a run on banks in a particular area, Government should have the power, after considering the recommendation of the Reserve Bank, to suspend the operation of the Act for limited periods either general or with reference to a particular bank or banks. This recommendation appears to be based on the principal

followed in England for the suspension of the Bank Act. While we agree with the authorities of the Reserve Bank that there is a genuine need for preventing the smaller banks from overtrading, we have our doubts as to the efficacy of the provision made for meeting emergencies owing to the delay that is likely to take place in the suspension of the Act as proposed above.

Profitable Uses of Funds.

The profitable uses which bankers in India make of their funds, may be classified as follows:

(1) Call loans, and loans repayable at short notice.

(2) Purchase of stock exchange securities.

(3) Loans and advances.

(4) Discounts.

CALL LOANS AND LOANS REPAYABLE AT SHORT NOTICE—The call loans and loans repayable at short notice, represent largely the amount lent to the money-market, the bill brokers and discount houses, and to a smaller extent to the members of the Stock Exchange "from account to account". As every bank has deposits which may be withdrawn without notice, and as the cash in the bank's vaults as well as that with the bankers' bank, may not be enough for meeting such demands, money lent in the form of call loans and loans payable after short notice acts as the second line of defence. It has an advantage over the first line of defence, because money, lent to the money-market, earns interest, while money, kept in hand and at the central bank, does not. In the leading money-markets of the world, the call money rates, namely, the rates for surplus money seeking employment for possibly a minimum period of twenty-four hours, are considerably lower than the bank rate. In India, owing to lack of a well-organized money-market, call money is sometimes almost unlendable in the slack season, at any rate when treasury bills are not available. Consequently, in India the item of call loans and loans payable at short notice did not assume any great importance, although more business in such loans was done during the period following the first Great War than that preceeding it.

In England, for example, 1943, the Barclay's Bank had 2.7, the Lloyds Bank 3.5, the Midland Bank 3.9, the National Provincial Bank 3.7 and the Westminster Bank 2.7 per cent. respectively of their deposits in call money and short notice, while during the same period Glyn Mills had invested as much as 15.4 per cent. of their deposits.

Purchase of Stock Exchange Securities.

Bankers invest a fair percentage of their funds in first class stock exchange securities. On December 31st, 1940, the Big Five Banks of England and Wales held in such investments £m. 646.456 representing 25.2 of their deposits, and the Big Five Indian Joint Stock banks (excluding the Imperial Bank of India) Rs. 32,65 lakhs representing 40.02% of their deposits.

Percentages of Investments to Deposits of the Big Five in England and India.

Year.	BARCLAYS Deposits.	BARCLAYS Investments.	BARCLAYS %	LLOYDS. Deposits.	LLOYDS. Investments.	LLOYDS. %	MIDLAND. Deposits.	MIDLAND. Investments.	MIDLAND. %	NATIONAL PROVINCIAL. Deposits.	NATIONAL PROVINCIAL. Investments.	NATIONAL PROVINCIAL. %	WESTMINSTER. Deposits.	WESTMINSTER. Investments.	WESTMINSTER. %
	£	£		£	£		£	£		£	£		£	£	
1929	336,053,607	60,010,605	17·9	351,658,804	43,868,232	12·5	379,622,758	40,050,556	10·6	270,859,1[illegible]	39,276,379	14·5	285,160,311	40,915,352	14·3
1935	405,391,487	113,134,892	27·9	400,375,711	142,068,391	27·8	442,088,508	119,793,768	27·1	301,992,887	94,110,607	31·2	322,675,384	108,165,537	33·6
1938	432,553,465	103,873,361	24·0	397,673,932	111,585,329	28·1	462,742,242	127,822,189	27·6	310,383,397	86,802,779	28·0	346,220,783	115,178,633	33·3
1939	461,376,448	105,860,762	22·9	433,583,266	108,149,602	24·9	496,271,135	114,455,271	23·1	336,678,235	78,578,138	23·4	366,478,334	103,227,527	28·2
1940	546,914,675	127,754,422	23·4	490,826,084	135,031,133	27 5	577,346,237	156,686,506	27·1	380,544,461	117,204,196	30·8	410,176,803	109,781,054	6·8
1941	644,676,858	174,427,080	27·1	581,324,838	166,850,806	28·7	685,073,065	207,083,513	30·2	466,215,650	140,635,148	30·2	469,944,803	148,792,168	31·7
1942	720,976,569	212,679,602	29·5	646,183,981	197,381,201	30·5	758,827,527	236,150,488	31 1	473,687,541	147,043,860	31·0	501,504,528	157,041,002	31·3
1943	822,499,871	222,614,668	27 1	727,916,379	219,562,460	30·2	859,692,182	229,654,509	26·7	521,542,279	135,160,173	25 9	541,789,356	166,912,578	31·0

Year.	THE ALLAHABAD BANK*† Deposits.	THE ALLAHABAD BANK*† Investments.	THE ALLAHABAD BANK*† %	THE BANK OF BARODA. Deposits.	THE BANK OF BARODA. Investments.	THE BANK OF BARODA. %	THE BANK OF INDIA. Deposits.	THE BANK OF INDIA. Investments.	THE BANK OF INDIA. %	THE PUNJAB NATIONAL BANK. Deposits.	THE PUNJAB NATIONAL BANK. Investments.	THE PUNJAB NATIONAL BANK. %	THE CENTRAL BANK OF INDIA Deposits.	THE CENTRAL BANK OF INDIA Investments	THE CENTRAL BANK OF INDIA %
	Rs.	Rs.		Rs.	Rs.		Rs.	Rs.		Rs.	Rs.		Rs.	Rs.	
	(000)	(000)		(000)	(000)		(000)	(000)		(000)	(000)		(000)	(000)	
1934	10,11,55	3,55,53	35·1	6,28,63	3,31,85	52·8	14,65,19	7,26,10	49·6	4,72,37	1,52,65	32·3	24,47,26		53·7
1935	9,76,36	4,07,99	41·8	5,77,39	3,01,20	52·2	16,16,50	7,85,73	48·6	5,47,08	1,95,11	35·7	22,22,82	12,96,81	58·3
1938	10,77,25	4,26,24	39·6	7,12,51	3,34,70	47·0	17,25,22	8,28,01	48·0	6,82,98	1,87,61	27·5	31,03,01	15,72,03	50·7
1939	10,95,19	4,72,49	43·1	6,93,72	3,05,86	44·1	18,59,51	7,10,05	38·2	7,15,05	1,72,20	24·1	29,86,82	13,18,59	44·1
1940	11,87,85	3,40,46	28·7	7,42,50	3,47,66	46·8	22,27,61	10,77,69	48·4	8,02,97	3,38,90	42·2	32,49,88	13,46,86	41·4
1941	12,35,74	4,87,58	39·5	9,53,80	3,61,64	37·9	25,86,03	7,88,49	39·5	9,80,30	6,21,89	63·4	41,31,90	20,77,18	50·3
1942	12,95,36	5,83,84	45·1	13,19,91	5,61,73	42·3	36,82,34	8,27,74	22·5	15,46,39	11,21,58	72·5	59,65,34	33,72,44	56·5
1943	16,82,02	8,72,13	51·9	20,66,35	8,63,69	42·8	55,13,88	18,43,72	33·4	26,43,16	18,20,07	68·9	81,63,71	44,32,85	54·3
1944	20,85,02	10,68,15	51·2	26,39,00	14,58,33	55·3	60,82,72	31,46,40	51·7	37,75,82	28,68,48	76·0	94,48,67	56,19,82	59·5

* The figures for the Allahabad Bank for the first two years relate to 1935 and 1936

† Year ending March.

As will be seen from the comparative statements given above, the percentages of investments to deposits in England' have increased substantially in recent years. The percentages in India are even higher. This can be accounted for by the fact that demand for funds for industrial and commercial purposes has gone down and consequently in these days the banks have to put more funds investments than was the case formerly.

The following points are in favour of investing funds in the purchase of stock exchange securities:—

(1) They act as a third line of defence as they can be realized in case the banker finds his cash reserve insufficient to meet the unexpected demand of his customers and money can be borrowed against them at reasonable rates.

(2) They yield a steady and reasonable return on the capital invested.

(3) Their presence in the balance sheet of a bank inspires and strengthens public confidence in the bank.

The Rating of Securities.

Factors of Rating—Whereas the rating of credit dates back to the last century, the rating of securities is of a comparatively recent growth. Though the rating of securities is difficult, yet the difficulty is by no means insurmountable. The task was attempted, in the United States of America, about the close of the first decade of the twentieth century. A definite rate or rank is given to cash security, according to one or more of the qualities it posesses. Rating, therefore, differs according to the qualities chosen. According to Lawrence Chamberlain, the author of "Principles of Bond Investment," there are nine principal qualities that go to make up an ideal investment. The safety of the capital and the stability of the income are regarded as the most important ones. Among the other factors upon which rating depends, are easy marketability, reasonable freedom from burdensome taxes, exemption from care, stability of price, acceptable denomination and chances of capital appreciation. Each of these qualities has to be rated separately for the purposes of general investment. A person buying securities for profit primarily considers the chances for capital appreciation. A rise in the price of a security may be result of improved credit and the success of the individual or corporation issuing the security. Another kind of rating may be based on the relative safety of the principal and income, to the exclusion of all other considerations. By this method a security is examined from the long point of view. It places those securities which are considered absolutely safe, such as the gilt-edged ones, at the top; then follow those which possess lesser degree of safety.

Factors Governing the Rating of Securities for Bankers' Investments.

Safety. A banker must first look to the safety of his funds, as he cannot afford to lose the money he thus invests. He should take a long-time view rather than the immediate prospects. A speculator, dabbling in securities, may lose the whole or a major part of his money in risky deals, but a banker, whose funds are largely borrowed ones, is in a different position. He must look before he leaps. He should bear in mind the fact that the safety of a security depends upon the credit of the person or institution issuing it. For instance, in normal times a Government stock, backed as it is by the tax paying capacity of the whole community and its willingness to make sacrifices, if necessary, to keep its collective good name as an honest payee of its debts is considered very safe, whereas the promissory note of an individual or the

debenture stock of a company, is backed up only by the credit of the person or corporation issuing it. In the case of foreign securities as well, there is the risk—not inconsiderable at times when foreign exchanges can be manipulated by governments—of loss to the banker through adverse fluctuations in the rates of exchange. For example, a banker in India, who bought some sterling securities before the first Great War when the rupee was linked to 16d. was bound to suffer loss, owing to the change in the rupee-sterling ratio irrespective of loss or gain due to the fluctuations in the prices of the securities. Similarly, an American banker holding sterling securities found himself exactly in the same position after 21st September, 1931, when England went off the gold standard.

Marketability. The banker must make sure, that the securities in which he invests his funds, are easily saleable without appreciable loss; otherwise one of the objects we have mentioned above, namely, that the banker's securities should form a third line of defence for him, will be defeated. If at any time, the banker requires a large amount of cash to meet the extraordinary demands of his customers and he is in consequence obliged to realize securites, he will not be able to sell them at reasonable rates, unless they are such as can be placed quickly in the market and in fairly large blocks, without any appreciable price disturbance. Government and municipal bonds as well as port trust and improvement trust stocks, can be disposed of in fairly big lots without forcing down their market prices but generally industrial and the like shares, except those of a few companies, are not easily marketable and when it is desired to sell, particularly for cash, a large block of such shares at a time of pressure, it proves difficult to do so without considerable loss to the banker due to fall in the prices of these securities.

Stability of price. The investments which are popular with bankers, possess the attribute of stability. The primary object of a banker in buying securities is not to gain by a possible rise in their prices which is the aim of a speculating dabbler. The securities should therefore, be such as are not liable to wide fluctuations and as such, are capable of being retained by the banker unless he is pressed for funds. Furthermore, it proves prejudicial to the credit of a bank if it is known to hold securities not possessing this quality of stability. Though a fall in the prices of such stocks if realized, may cause no very great loss to the bank, there is always the danger of its depositors and shareholders becoming nervous and panicky, when they know that their bank holds shares which are unstable in prices.

Income or yield. A banker must also consider that his investments should bring him a fair and stable return on the capital outlay, although he should not look for the high yield which comparatively speculative securities are able to give. Therefore in calculating the net yield, it is necessary to take into account the market price, the rate of interest the securities carry, and the loss or gain, if any, at the time of redemption. The yield may be current excluding the loss or gain by redemption or net which is arrived at after taking into account the result of redemption. The banker's investments may include long-dated securities quoted far below their face value, because, in addition to the investment being for a fairly long period he has the advantage of a possible capital appreciation, which may escape the payment of income-tax. The risk, however, of their depreciation, in case of a war, should not be overlooked. It is also to be borne in mind whether a security is or is not free of income-tax. A small investor should also take into account the rate at which income-tax will be paid by the company issuing debentures

or preference shares so as to claim the difference betwee tnhe amount of income-tax deducted and that which he is liable to pay according to his income.

CALCULATION OF YIELD—When a certain security is quoted at a discount or premium, the discount or premium affects the yield; e. g., 5 per cent. U. P. Bonds (1944) at about Rs. 106-14-0 give a gross yield of 4.67 per cent. as against a net yield of only 2.9 per cent. which is arrived at after deducting the sum of Rs. 6-14-0 from the interest to be received during the remaining period of the life of the bonds. It must also be remembered that the Indian prices of Government loans and debentures are generally exclusive of accrued interest, and, therefore, interest up to the date on which they are delivered is paid to the seller over and above the price agreed upon.

In addition to the considerations explained above, the ideal investment should have fair chances of appreciation, be reasonably free from burdensome taxes and its duration and denomination should be acceptable.

Classification of Securities.

Having considered the general principles which should guide a banker in the selection of securities for investing a part of his working capital, it is desirable to state the principal features of the chief types of stock exchange securities, namely, the securities which are officially listed and dealt in, on the stock exchanges.

The following are the main classes of stock exchange securities:—

PUBLIC DEBTS—The Indian securities belonging to this class are the various loans of the Government of India and the Provincial Governments; for a list of these securities, see Appendix C, *post*. When a Government finds its current revenues from taxes, duties and other sources inadequate to meet the current expenses, as is the case during a war, or, when large sums of money are required for productive purposes, *e. g.*, irrigation, railways and development schemes, it has to borrow funds. The terms, as regards the interest and the repayment, are settled according to the conditions of the money-market, the credit, and the state of the finances of the Government borrowing the money. Generally, no particular asset is earmarked for the purpose of the payment of interest or capital, and, therefore, such securities rest upon the willingness and taxable capacity, of the people concerned. In other words, when a Government borrows, the credit of the entire nation is pledged, and, therefore, the Government of rich countries, *e. g.*, the United States of America and the United Kingdom, are able to borrow funds at lower rates than those paid by the Governments of countries like India and Australia. No doubt, there are also other factors, such as the stability of the Government and the purposes, productive or otherwise, for which the borrowed funds are to be used, which account for the differences in the rates of interest on securities of the Governments of different countries. When loans are raised largely for productive purposes, such as for the building of railways and the construction of canals, as has been the case with most of the earlier loans of the Government of India, money can be borrowed at a lower rate than when funds are required for carrying on a war or for meeting a dificit in the normal budget.

Rating of securities. The rating of Government securities is largely dependent upon the finances of the country. The credit of the governments of the United Kingdom and the British Dominions is so good that investors

offer to subscribe to their stocks without any special security. On the other hand, the bonds of certain foreign countries such as China are not easily marketable, in spite of the fact that receipts from a particular tax are earmarked for the payment of interest on such securities. One important condition on which a government's credit depends is its capacity to balance its budgets and its willingness and ability to honour its past obligations. The Corporation of Foreign Bond-Holders, London, is prepared to take up the cause of a bond-holder who has suffered from the defaults of foreign governments. Account has also to be taken of the special factors such as the geographical position, the trend of growth of population, the political situation and financial stability extending over a series of years.

Difficulties regarding exchange. Most of the foreign governments' securities are in the form of bonds to bearer. Almost all these, which were formerly issued in London, are in sterling currency and interest on them is paid in sterling in London. Holders of some foreign governments' securities payable in the currencies of these countries had a sad experience during and after the war of 1914-18 as a result of the depreciation of those currencies.

Short or long-dated securities. These securities may either be short-dated or long-dated. While, as the name implies, short-dated securities mature early, the long-dated ones have a fairly long currency, but unlike non-terminable loans, bear a definite date for redemption. The short-dated securities have their advantages and disadvantages. For instance, if a government has to offer a high rate of interest on account of war or some other special reasons, it may be advantageous for it to borrow funds in the form of short-term loans, as, after the war with the improvement in its credit and the reduction in the general rate of interest, the security can be converted into one carrying a lower rate, as was done in this country during the years following the 1914–1918 war. The £2,000,000,000 5 per cent. sterling British War loan was converted in 1932 into a 3½ per cent. loan. Similarly in India, the 5 per cent. War Loan 1929–47; the 5 per cent. Bonds, 1933; and the 6 per cent. Bonds, 1933–36, were converted in the earlier part of 1933, into a 4 per cent. Loan, 1960–70. However, in case the credit of the state deteriorates, short-term securities give far more trouble to the government than long-term securities as the government finds it difficult to repay short-term loans. From the point of view of a short period investor, a short-dated security is preferable to a long-term one, while the long period investor would prefer the long-term security. Insurance companies, for example, which are generally long period investors, would prefer to invest in long-term securities such as the Conversion Loan of 1960–70.

SEMI-GOVERNMENT SECURITIES—Next to the public debts, are the semi-government securities, such as port trust, improvement trust and municipal bonds and debentures, which are considered very safe, as, firstly, these bodies hold very valuable properties, and, secondly, their efficient control and administration is ensured as these bodies have on their boards of management, not only members nominated by Government, but also representatives of commercial bodies such as the chambers of commerce, etc. Thirdly the municipalities with rare exceptions also have the support of those who either live or own properties within the respective limits of the areas administered by them, just as government securities have, at their back, the credit of the entire nation. As a Government can add to its revenues by raising the rates of existing taxes and imposing new ones, msimilarly, bodies like municipal corporations and port trusts can raise

their rates and taxes so as to balance their budgets and meet their obligations. Fourthly, generally in the case of government securities, as well as those of semi-government institutions of the type mentioned above, provision for sinking funds for the purpose of paying off their holders is generally made. Consequently, securities of semi-public bodies, which may either be in the form of bonds or debentures, are considered very safe. However, their buyers have to be careful about the legality of their issues. Such securities have been held as illegal, for one or more of the following reasons given by Mr. Jordon (Investments, by David F. Jordon, 2nd Edn., p. 83):—

(*a*) the legislative act relied on has been held unconstitutional;

(*b*) the debt limit has been exceeded;

(*c*) statutory authority has been lacking; and

(*d*) statutory requirements for proceedings have not been lived up to.

Need for reliable investment agencies. An ordinary investor is not in a position to inquire into these matters, and it is, therefore, desirable to buy them through some well-known bond houses or share brokers. In this connection, it may be observed that India needs companies, such as the Investment Registry Co., Ltd., of London, which not only buys and sells securities on behalf of its clients, but also keeps a close watch on the securities held by them.

Trustee Securities. Securities belonging to public debts and semi-government securities classes, and most of the railway securities are classed as trustees securities and are considered very safe. The following briefly indicates the position of trustees as regards the investment of trust funds.

Section 20 of the Indian Trusts Act, 1882 (II of 1882) as amended by the Indian Trusts Amendment Acts of 1908, 1916 and 1934 lays down:—

When the trust-property consists of money and cannot be applied immediately or at an early date to the purposes of the trust, the trustee is bound (subject to any direction contained in the instrument of trust) to invest the money on the following securities, and on no others:—

(*a*) In promissory notes, debentures, stock or other securities, of any Provincial Government or of the Central Government, or of the United Kingdom of Great Britain and Ireland;

Provided that securities, both the principal whereof and the interest whereon shall have been fully and unconditionally guaranteed by any such government, shall be deemed, for the purposes of this clause, to be securities of such government.

(*b*) In bonds debentures and annuities, charged or secured by the Imperial Parliament on the revenues of India or of the Federation or of any Province:

Provided that, after the fifteenth day of February, 1916, no money shall be invested in any such annuity being a terminable annuity unless a sinking fund has been established in connection with such annuity; but nothing in this proviso shall apply to investments made before the date aforesaid;

(*bb*) In India three-and-a-half per cent. stock, India three per cent. stock, India two-and-a-half per cent stock or any other capital stock which may at any time hereafter be issued by the Secretary of State for India in Council under the authority of an Act of Parliament and charged on the revenues of India or which may be issued by the Secretary of State on behalf of the Governor General in Council under the provisions of Part XIII of the Government of India Act, 1935;

(*c*) In stock or debentures of, or shares in, railway or other companies the interest whereon shall have been guaranteed by the Secretary of State for India

in Council or by the Central Government; or in the debentures of the Bombay Provincial Co-operative Bank, Ltd., the interest whereon shall have been guaranteed by the Secretary of State for India in Council or the Provincial Government of Bombay.

(*d*) In debentures or other securities for money issued under the authority of any Act of a Legislature established in British India, by or on behalf of any municipal body, port trust, or city improvement trust in any Presidency town, or in Rangoon town, or by or on behalf of the trustees of the port of Karachi;

(*e*) On a first mortgage of immoveable property, situate in British India Provided that the property is not a leasehold for a term of years and that the value of the property exceeds by one-third, or, if consisting of buildings, exceeds by one half, the mortgage money, or

(*f*) On any other security expressly authorized by the instrument of trust, or by any rule which the High Court may from time to time prescribe in this behalf;

Provided that, where there is a person competent to contract and entitled in possession to receive the income of the trust property for his life, or for any greater estate, no investment on any security mentioned or referred to in clauses (*d*), (*e*) and (*f*) shall be made without his consent in writing.

Powers to purchase redeemable stock at a premium. Section 20-A, *ibid.*, reads :—

(1) A trustee may invest in any of the securities mentioned or referred to in section 20, notwithstanding that the same may be redeemable and that the price exceeds the redemption value.

Provided that a trustee may not purchase at a price exceeding its redemption value any security mentioned or referred to in clauses (*c*) and (*d*) of section 20 which is liable to be redeemed within fifteen years of the date of purchase at par or at some other fixed rate, or purchase any such security as is mentioned or referred to in the said clauses which is liable to be redeemed at par or at some other fixed rate at a price exceeding fifteen per centum above par or such other fixed rate.

(2) A trustee may retain until redemption any redeemable stock, fund or security which may have been purchased in accordance with this section.

Banker's preference for such securities. Bankers generally prefer such securities not only because they are safe, but also because, in case of need, money can be raised against them without any difficulty. Moreover, their prices are comparatively steady. Although, it is true, in times of war or serious political disturbance, their prices are liable to go down, the range of their price fluctuation in normal times is indeed very narrow.

RAILWAY SECURITIES—In this class, are included shares, stocks, bonds and debentures of different kinds of railways. In this country, the interest on some of these securities is guaranteed by the Government of India, and, in certain cases, the guarantee is applicable to the principal also. Some of them carry a guaranteed minimum rate of interest and the surplus profits after the payment of this guaranteed interest, are required to be divided between the State and the Company concerned in certain proportions. In the case of feeder railway companies, generally the Government or the railway company working the line, undertakes to refund, if necessary, such portion of the earnings from the traffic interchanged between the feeder company and the working agency line, as will be sufficient to give the company 5 per cent. return on the capital expenditure by the feeder company, subject to the proviso, that, when its net earnings exceed the amount required for the payment of 5 per cent. of such expenditure, the surplus is to be divided equally between the working agency and the company. There are, at present, twenty-nine such railway companies whose shares are quoted on the Indian stock exchanges and their total capital including debentures is approximately a little over eight crores. Such securities are, generally

considered very safe, as, in addition to the valuable properties which railway companies own, they enjoy the monopoly of running railways through certain tracts of the country. Thus, they can be almost sure of getting a reasonable revenue. Particularly the securities which carry Government guarantee, either in respect of interest alone or both in respect of interest and capital are considered very suitable for the investment of funds available with a banker. Moreover, such securities have an additional advantage in that the earnings from traffic of such companies are published every week in the Gazette of the Government of India and in important financial and commercial papers, and, therefore, their financial position can be gauged from time to time without any difficulty.

Securities of the public utility companies—Generally speaking, a public utility company is one which supplies a product or renders a service necessary for the welfare of the people. Companies engaged in the distribution of water, light, heat and those supplying the means of transportation and communication, are spoken of as public utility enterprises, being more or less indispensable to the general public. Instances of such public utility companies are the various electric supply, tramways, gas, telephone and hydro-electric power companies. The securities of such companies are generally regarded quite safe, as their business such as to supply necessaries of life for instance, water power and gas, or provide means of communication and transport, is considered quite sound. Moreover, they generally have the monopoly of supplying a particular utility or product in specified localities. The banks, therefore, do not hesitate to invest a portion of their funds in the debentures and occasionally also in the shares, of first class public utility companies. Securities of public utility companies are very popular in the United States of America, though they play a relatively minor part in Europe.

Industrial securities—In this group are included all the securities, such as shares, stocks, bonds and debentures of companies, engaged in the production or distribution of the large variety of commodities and services used in modern life. Such companies can be classified under four heads, namely, (1) manufacturing, (2) trading, (3) extracting, and (4) shipping. Each of these classes possesses special features of its own. As stated elsewhere changes in business conditions affect different industrial companies diversely. For stock exchange purposes, they are grouped according to the nature of business they engage in, such as the iron and steel, the electrical, the mining, the textile, the oils, the automobiles groups and so on.

Bankers and industrial securities—As a rule, bankers do not hold industrial securities to any appreciable extent, as compared to their investments in the other classes of securities. Such securities as a class, are not considered as safe as those already referred to. Some industrial securities such as the preference shares of certain kinds of industrial companies, may, however, be quite good and safe. They may give a fairly reliable yield, but, as a rule, they do not generally find favour with bankers owing to their comparatively restricted marketability. Such securities generally appeal to those investors who are not content with a low yield from other investments and who are not afraid of taking the risks ordinarily attendant upon the investment of funds in the shares and stocks of such concerns; they subscribe freely to their share capital and debenture issues, as they offer the prospect of a higher yield than that offered by the gilt-edged securities. Debentures of certain industrial concerns are regarded quite safe, their preference shares

fairly reliable, ordinary shares speculative and deferred ones highly risky. On the other hand, dividends on their shares are dependent upon profits, which in turn are governed by various factors, such as the price of raw materials, wages, overhead charges and the demand for the manufactured products; in the event of changes in one or more of these, the capacity of the company to pay dividend may be diminished or increased. In the case of such concerns, not only the profits, but also the security of capital, may depend upon the prudence, honesty, and ability of the management, whereas, in the case of gilt-edged securities, receipts accruing from rates, dock dues, railway-fares, freights, etc., from which interest and sinking fund are found, depend in a much lesser degree upon such factors. If bankers go in at all for industrial securities, they prefer debenture stock to preference shares, preference shares to ordinary and ordinary to deferred stock.

Business barometers—It will be agreed that the general business conditions affect the prices of securities, more particularly those of the industrial and commercial order. With a view to enable people to be in touch with such conditions, it is desirable that business barometers should be published either by the government or by the central banking institution, or some other equally reliable body. It is not many decades ago that the proposal of a country having a bureau for forecasting weather conditions was held ridiculous. The Department of Commercial Intelligence and Statistics issues a monthly survey of business conditions in India, which is useful to investors in various securities. Attention may also be drawn to the weekly reports issued by certain well known firms of brokers dealing in stock exchange securities, and to the financial columns of dailies and weeklies. Besides, periodicals like the Financial Review of Reviews issued in England and Indian Finance in this country specialize in dealing with possible developments in various securities on the market and provide a reliable index of fluctuation in prices. Similarly, in the West, some banks publish monthly reports dealing with the economic and financial conditions.

Loans and Advances.

Importance of loans and advances—We have noted above, that in normal times the percentage of funds invested by most of the banks in stock exchange securities, is not very large, and therefore, they have to look to other profitable avenues besides those already mentioned, for the employment of their funds. Amongst these, are the granting of loans and overdrafts and the discounting of commercial bills. There is no fundamental difference between the different forms in which bankers give accommodation to their customers which, as already stated in the opening chapter, is one of the most important functions of modern banks. In a lare number of cases the proceeds of loans and discounts are credited to the current accounts of the customers, who make disbursements by cheques. Thus, when a banker discounts a bill for a customer, he places the amount of the bill, less discount charged, to the latter's current account. The lending function of banks is so very important in modern times, that it is almost impossible to disregard it in the case of any bank, much less in the case of commercial banks, with which this book is chiefly concerned. For example, in the year 1940, the loans and advances of the Big Five Indian Joint Stock Banks constituted 44.4 per cent. of their deposits during the year. This percentage during the last four years gradually went down owing to the large increase in deposits without any corresponding increase in the loans and advances

Ratio of Loans and Advances to Deposits of the Big Five Banks in India.

Year.	The Central Bank of India, Ltd.			The Bank of India, Ltd.			The Allahabad Bank, Ltd.			The Punjab National Bank, Ltd.			The Bank of Baroda, Ltd.		
	Deposits.	Loans & Advances.	%	Deposits.	Loans & Advances.	%	Deposits.	Loans & Advances.	%	Deposits.	Loans & Advances.	%	Deposits.	Loans & Advances.	%
	Rs. (000)	Rs. (000)		Rs. (000)	Rs. (000)		Rs. (000)	Rs. (000)		Rs. (000)	Rs. (000)		Rs. (000)	Rs. (000)	
1935	22,22,82	6,75,71	30.4	16,16,50	8,10,65	50.1	10,11,55	5,47,85	54.2	5,47,08	2,85,60	52.2	5,77,39	1,87,30	32.4
1936	31,48,52	11,98,35	38.1	16,99,94	8,90,76	52.4	9,76,35	3,72,60	38.2	6,09,88	3,66,31	60.1	6,94,51	2,49,72	36.0
1937	30,68,28	13,52,23	44.1	17,13,71	8,57,92	50.1	10,47,86	6,04,85	57.7	6,96,47	3,95,18	56.7	6,79,58	2,86,24	42.1
1938	31,03,01	14,13,40	45.5	17,25,22	7,95,91	46.1	10,77,25	5,68,51	52.8	6,82,08	4,26,91	62.5	7,12,51	2,85,12	40.0
1939	29,83,82	15,73,68	52.7	18,59,51	9,54,10	51.3	10,95,19	5,37,76	49.5	7,15,05	4,34,47	60.8	6,93,72	3,39,68	49.0
1940	32,49,88	13,36,01	41.1	22,27,61	7,41,20	33.3	11,87,85	6,91,05	58.2	8,02,97	3,47,87	43.3	7,42,50	3,43,28	46.2
1941	41,31,90	16,15,69	39.0	25,86,03	10,38,12	40.1	12,37,85	5,31,29	42.9	9,80,30	3,93,62	40.1	9,60,01	4,61,18	48.0
1942	59,65,34	13,81,73	23.1	36,82,34	9,04,42	24.5	12,97,64	4,71,44	36.3	15,46,33	4,45,68	28.7	13,26,72	3,66,95	27.6
1943	81,63,71	22,80,88	27.9	55,13,88	13,20,76	23.9	16,84,43	5,52,31	32.7	26,43,16	8,19,14	30.9	20,73,95	6,30,41	30.3
1944	....	....	..	....	....	..	20,87,60	7,14,61	34.2	....	....	..	....	.. ..	..

Although receipts from exchange, commissions, and banker's charges, contribute a fair amount to the profits of a commercial bank, its earnings are chiefly derived from interest charged on loans and discounts. It is, therefore, necessary to consider carefully the position of a banker with regard to loans and advances. However, before doing that, we propose to state briefly some general principles which should guide him in this business.

General Principles.

SAFETY—"Safety first" should be the first guiding principle of a banker, so far as his advances are concerned, because the very existence of a bank depends on the safety of its outstandings, which should never, therefore, be sacrificed to the profit-earning capacity of its advances. This has led people to believe that a bank will never advance any loan, unless it is fully secured. Such is no doubt the ideal conception of banking, but as a result of competition from other banks, every bank has to grant a certain number of loans to its customers against their personal security. In such cases, the manager of the bank uses discretion and never lends a sum obviously beyond his customer's resources. Consequently to maintain a banking concern in sound condition, it is very essential that the safety of its advances to customers should be above suspicion. Scrupulous care should be taken that the funds lent out are not subject to any risk of being lost.

LIQUIDITY—Secondly, the banker while making advances must see that the money he is lending is not going to be locked up for a long time, which would make his loans and advances less liquid and more difficult to realize in cases of emergency. In fact, it is not the function of commercial banks to make loans which are more or less of a permanent nature. Usually, it is a part of the circulating capital of a commercial or industrial concern, which a commercial bank is expected to provide. The amount required for fixed assets, such as land, building and machinery, and even at least a part of the circulating capital, should be provided by the proprietors of the business or by other institutions which specialize in such business. A commercial bank can afford to lend funds only for a short period, as its liabilities are either payable on demand or at short notice. If it makes advances for fixed assets, there is no likelihood of its being able to recall such loans in time to meet the demands of its depositors, should a general withdrawal of the deposits occur. This is one important aspect which distinguishes the banking from the insurance finance. "The art of banking consists in knowing the difference between a mortgage and a bill of exchange." A mortgage is a kind of more or less permanent investment, and, therefore, not ordinarily a banking security. The discounting of a good commercial bill of exchange on the other hand, is a very sound banking transaction. Of course, industrial banks which have a large capital of their own and which borrow funds for long periods can safely lend money required for fixed assets; they can wait for several years, for the repayment of their advances, as their liabilities do not mature on demand or at short notice. Banking practice on the continent of Europe, *e.g.*, in Germany, differs from that obtaining in the United Kingdom. On the continent, bank funds are invested in industrial and business concerns to a very large extent and as a consequence of this, banks have a direct interest in the success or otherwise of industrial undertakings and are closely associated with, not infrequently controlling their management, a practice which is repugnant to the English ideal of sound banking. It is necessary, therefore, to enquire about the

purpose of the loan and the resources wherefrom the borrower is expected to repay as they have an important bearing on the liquidity of the loan.

BANKERS' LOANS GENERALLY REPAYABLE ON DEMAND—Bankers, generally, make their loans repayable on demand, although there may be an understanding that the customer would be allowed to use the funds for at least a certain period, provided he complies with the terms of the agreement. They also reserve to themselves the power of cancelling or reducing the amounts of advances, but, generally, they have to give a reasonable notice. For instance, if a banker who has promised his customer an overdraft to the extent of Rs. 10,000, wishes to reduce its amount to Rs. 5,000, he cannot refuse to honour his customers' cheques issued before the receipt of the notice by the customer, so long as they do not exceed the limit of the overdraft originally agreed upon; see *Rouse* v. *Bradford Banking Co.*, [1894] A.C. 595, 596. If the customer's securities depreciate and he fails to maintain the margin, in accordance with the terms of his agreement with the banker, or if the customer deals with the security given to the detriment of the banker, as it happens where the customer gives to another person a legal mortgage of the property of which he has given an equitable mortgage to the banker, then the banker would be justified in dishonouring his customer's cheques. However, in actual practice a banker would give notice of his intention to reduce the amount of the overdraft beforehand, unless the customer deposits more securities.

LAW OF LIMITATION—The question falls in two categories—(1) Where demand on the debtor is necessary and (2) in case of unsecured advances where the debt is repayable on demand without the place or manner of repayment being stated. In the first case the limitation period does not begin to run against the banker as creditor until demand has been duly made. For example, in most cases where a charge is created the debtor covenants to repay on demand and it is also provided that a demand is to be deemed to have been made when sent by post to the last registered address of the debtor. In the second category the limitation period begins to run from the date of the debt. The debiting of the interest to the account without the consent or knowledge of the debtor does not bar the running of the limitation period. An acknowledgment of debt must be in writing to take a debt out of the Limitation Act. In the case of bankers guarantees as it is generally provided that the surety is to pay "on demand being made in writing" it is not necessary that a guarantee should be renewed after every three years. In the absence of the said provision renewal will be necessary. In the case of bills of exchange and promissory notes payable on demand, time runs from the date they bear or their dates of issue whichever may be later; when such instruments are payable at sight the date of presentment and in the case of bills and notes payable at a future date the due date will be the date of the commencement of the period of limitation.

NOT TO INVEST ALL FUNDS IN ONE INDUSTRY OR IN ANY ONE GROUP OF INDUSTRIES—It is also necessary to remember that a prudent banker must avoid investing all his funds in meeting the needs of any one industry or any one group of industries for considerations of self-interest as well as the larger public good. The imprudence of putting one's all eggs into one basket cannot be too often reiterated.

TO ADVANCE MODERATE SUMS TO A LARGE NUMBER OF CUSTOMERS PREFERABLE TO LENDING LARGE AMOUNTS TO A FEW PERSONS—It should

also be stated, that it is better for a banker to advance moderate sums to a large number of customers, in preference to lending large sums to a few customers, as there is less chance of there being a general default by many customers, whereas, on the other hand, it is quite possible that several of the heavily indebted customers of a bank may be embarrassed at more or less the same time, in which case the banker may not find it easy to tide over the difficulty. The early history of English banking is replete with instances of the failure of several banks, chiefly on account of their having locked up most of their outstandings with a few clients. In India, also, the failure of some banks is directly traceable to the fact that they had invested major portions of their funds in concerns under, more or less, one man's control. It is with this object, that the National Banking Act in the United States of America restricts the maximum of the capital and surplus, that a bank can lend to a person, partnership or company.

ADEQUATE RETURN ON HIS INVESTMENT—Another important factor that will determine the decision of the banker whether or not to grant a loan will depend upon the answer to the question whether or not he will get a fair return on his investment. The difference between his borrowing and lending rates constitutes his gross profit and no banker ordinarily will think of an advance without a satisfactory margin of profit.

Advances by Indian Banks.

ADVANCES—An Indian banker's advances are generally, either clean advances against personal credit with a second signature to the pro-note, or against tangible and marketable securities, lodged or pledged with the lender. The third class of loans, namely, clean advances against the personal credit of the borrower only, which are fairly common in western countries, is not favoured by bankers in India, who rather prefer promissory notes indorsed by shroffs, or managing agents of some companies. Even the *hundi*, the origin of which dates back to the days of the Mahabharata, is, in effect, a two-name paper. According to the Indian Central Banking Enquiry Committee the factors responsible for this are:—

(*a*) The absence of touch and the lack of knowledge resulting therefrom between borrowers and lenders in the principal money-market centres;

(*b*) the absence of the policy "one man, one bank" which prevails in western countries;

(*c*) the practice in India which has been materially assisted by and has in its turn, fostered the managing agency system; and

(*d*) the absence of institutions like "Seyds" and "Duns" for supplying information about the financial standing of borrowers.

Cash Credits, Overdrafts and Loans.

CASH CREDITS—Advances by Indian Banks, generally take the following three forms, *i.e.*, cash credits, overdrafts and loans. A cash credit is an arrangement by which a banker allows his customer to borrow money up to a certain limit against either a bond of credit by one or more sureties, or certain other securities; see Appendix A, Form No. 29, *post*. This is the most favourite mode of borrowing by large commercial and industrial

concerns in India, on account of the advantage that a customer need not borrow at once, the whole of the amount he is likely to require, but can draw such amounts as and when required. He can put back any surplus amount which he may find with him for the time being. The banker granting cash credit and overdraft facilities has to estimate the amount of his customers' requirements and in case the actual drawings fall much below his estimate he may lose interest on the funds remaining idle. In order to minimise such losses, generally, banker's cash credit agreements provide a "half or quarter, interest clause," according to which the customer has to pay interest or at least on half, or quarter, of the amount of cash credit allowed to him, even when he does not use that amount. Although, in practice, clean loans on personal credit of an individual of undoubted means and character, turn out to be just as safe and satisfactory as any other, yet an Indian banker partly due to his innate conservatism and partly on account of the tradition established by the old Presidency Banks, insists on having paper with at least two names as security for his advances, as a clean advance on a single name promissory note unsecured by collateral, is looked upon by him as less secure.

OVERDRAFTS—When a customer requires temporary accommodation, he may be allowed to overdraw his current account, usually against collateral securities. From the customer's point of view this arrangement like the cash credit is advantageous as he is required to pay interest on the amount actually used by him. The essential difference, between a cash credit and an overdraft, is, that the latter is supposed to be a form of bank credit to be made use of occasionally; whereas the former is used for long terms by commercial and industrial concerns doing regular business.

DOCUMENTS TO PROVIDE CONTINUING SECURITY—Documents taken to secure cash credit and overdrafts should provide for continuing security, *i.e.*, the security should not diminish or lapse in case the account is reduced or brought in credit. Otherwise the documents would not cover any subsequent debit entries in the account. It is particularly necessary in case of accounts guaranteed by third parties.

LOANS—When a banker makes an advance in a lump sum which cannot be paid wholly or partially with permission to its subsequent withdrawal it is called a loan. If the customer repays the same either wholly or partially and wishes to have subsequent accommodation, the latter will be treated as a separate transaction to be entered into if the bank agrees to do so and subject to such terms as the bank may like to impose. Thus the bank does not suffer any loss of interest as a result of carrying excessive cash which is necessary in the case of cash credits and overdrafts. Loan accounts are said to have a lower operating cost than cash credits and overdrafts because of the larger number of operations in the case of the latter as compared to the former and consequently a lower rate of interest on loans appears to be justifiable than in the case of overdrafts and cash credits.

CHAPTER IX

EMPLOYMENT OF FUNDS (continued)

Unsecured and Secured Loans.

The Indian Company Law requires that the advances made by a registered company including a bank, should be classified as secured and unsecured and shown separately in its balance sheet. The bulk of the loans, granted by banks in India, is generally secured by the tangible security of valuable collaterals such as bonds, shares and merchandise deposited either in the bank's godowns, or in the godowns of the borrower under letters of hypothecation and immoveable property, but occasionally loans are granted even without any security. We shall first dispose of the unsecured loans.

UNSECURED LOANS—An unsecured loan is one for which the banker has to rely upon the personal security of the borrower. The chief basis of such transactions is the personal credit of the customer. It is, therefore, necessary to state briefly the meaning and basis of credit and to indicate the principal points which should be remembered in determining the credit of a customer.

The word "credit," as used in ordinary parlance and as used in scientific books, has different meanings. Various definitions of the term given in text books differ, chiefly on account of the difference in the emphasis which different writers lay on the one or the other of the elements in the conception of that term.

"In its simplest form," says Professor Laughlin (The Principles of Money by J. C. Laughlin, p. 72), "it (credit) is a transfer of commodities involving the return of an equivalent at a future time."

Kines defines credit as an "Exchange in which one party renders a service in the present while the return made by another falls in the future." This definition was criticized by Nasse, as it lays too much emphasis on the element of futurity. According to his own definition, "Credit is the confidence felt in the future solvency of a person, which enables him to obtain the property of others for use, as a loan, or for consumption." Macleod speaks of credit as "the present right to a future payment."

CREDIT TRANSACTION DISTINGUISHED FROM CASH TRANSACTION—The origin of the word "credit" is "*Credere*," to believe, to trust, to have confidence or faith in. In its popular usage, however, credit implies the power of a person to induce others to part with their goods and services in return for a promise, express or implied, to perform some act in the future, usually a payment in cash or kind. For example, if one Mr. Dastur is able to persuade Messrs. Bhide, Apte & Co. to let him have certain goods worth Rs. 500 to be paid for after three months, the transaction will be regarded as a credit transaction. On the other hand, if the goods are given in exchange for cash, the transaction is known as a cash one. The chief difference between these two transactions is that in the first case there is the time element, that is, the purchase of the goods and the payment for the same are separated by time, which is not so in the case of the second transaction. Similarly, in the case of money loans, the receipt of the money by the borrower and its repayment are separated by time. But "futurity" alone does not explain the existence of credit. Credit is given because the

lender has *confidence* in the borrower's ***ability*** and ***willingness*** to repay the loan. On the other hand, credit does not exist because of confidence alone; present goods and services are given on the basis of an expected future return. The creditor will part with the power to obtain goods and services in the present, only because he knows that the borrower has a certain amount of capital, which is capable of being put to productive use and thus enable the borrower to return the loan at a future date, or to which, in the last resort, the creditor can turn with a view to recover his dues, either by entering into the possession of the property, or using it, or selling it.

Basis of credit—As regards the reason why one person agrees to extend credit to another, there is hardly any unanimity of opinion. It is generally believed that *confidence* is the basis of all credit transactions. If those who grant credit, have no confidence in the willingness and ability of the borrower to repay the loan at maturity, they would never think of granting these loans except, perhaps, on personal or philanthropic grounds. No banker would willingly give a loan, unless he has sufficient confidence in the borrower that it will not be necessary to seek the help of a law court for its recovery. It should, however, be asked, "What is the basis of confidence?" To answer this question is to answer the question as to the basis of credit. The fundamental principles upon which credit is generally based, are character, capacity and capital, which are known as the three C's of credit; instead of the three C's some authors mention the three R's, *i.e.*, reliability, responsibility and resources. It will be apparent that these factors are not quite unrelated. A person whose character and capacity are good, is likely to have some capital as well.

Character—Character is the greatest single asset any individual can have. The character of the borrower indicates his intention to repay the loan, whereas his capacity and capital are the factors upon which depends his ability to repay the money advanced. If a person's integrity is known to be questionable, the banker will avoid him, even when he wants accommodation against a collateral security, because it may later on transpire that his title to the security deposited is defective in one respect or another, which defect may not be apparent from the ordinary examination of the documents; or he may turn out be a holder of the security in his fiduciary capacity. This applies particularly to cases in which the banker takes only an equitable charge. Even when the banker acquires a legal title to the security deposited with him, his position, though quite strong, is not absolutely unassailable, as sometimes, after advancing money against a legal mortgage of a property, he may find to his detriment that its owner has already executed a long lease at a low rent. The banker has to be very careful with the current account of such a person, both as regards cheques drawn by him as well as those sent in for the credit of his account. "Honesty" alone does not constitute character. There are several other factors, for example, "the sobriety, the promptness of payment, good habits, personality, the ability and the willingness to carry a project through from beginning to end and the reputation of the people with whom he deals which go to make the *character* of a customer."

The following few examples will help to make the position clear (Bank Administration, by James B. Trant (first edition), pp. 189-191):—

Lack of sense of responsibility. An apparently respectable man applies to his bank for a loan. As the bank was not prepared to grant him the loan applied for without a guarantee, he was asked to obtain the signature

of a friend known to the bank on the promissory note. On the maturity of the loan, the borrower applied to the bank for its renewal. On being told that the loan would be renewed only upon his obtaining the consent of the surety, he immediately stated that the surety would either have to consent to the renewal of the note or pay it himself. He was put down as a poor credit risk, as he failed to appreciate the kindness of his friend and was apparently indifferent to the inconvenience to which he might put the party. He lacked sense of responsibility.

An honest gambler. A well-dressed man enters a bank-manager's office and asks for a loan. He succeeds in obtaining only a small amount. When he is gone, the manager, in the course of conversation with another customer, comes to know that the man is a gambler with a fine reputation for honesty so common in that trade. The loan being a small one, the risk is not great. But usually no banker would extend credit to a gambler, except, perhaps, when it is adequately protected by collateral security.

Dishonest customer. A man, notorious for dishonesty and frequent repudiation of his debts, whenever possible, applies for a loan. He offers collateral security, but the application is turned down because of his lack of integrity and responsibility. Banks will have nothing to do with such customers, even when they offer adequate collaterals for securing their loans.

Capacity and capital—In conclusion, it may be stated that some people believe that a man of character is more credit-worthy than a man of property with all its uncertainties and with all the attendant evils like false valuation, mis-representation and other mal-practices. With the impersonal relationship that has come to exist in modern large scale business the importance of the other two C's—capacity and capital- has increased a great deal. The former is closely connected with the success or failure of a business. If the customer has no insight into the particular business, for which he wants to borrow funds from the banker, there are greater chances of loss than of "profit" to the banker. For instance, if a person engages himself in the business of imported provisions and if he is not much acquainted with the line, he may suffer losses owing to the deterioration of some goods, *e.g.*, chocolates, in summer. The possession of the third C—capital—by the person applying for accommodation, is due to the fact that there cannot be any absolute certainty about the success of a business and in case there is a loss, the customer's capital should enable him to meet the loss without shifting it to his creditors. It must, however, be mentioned that the extent of consideration which the three C's deserve at the hands of a lending banker, varies with different customers. For example, if a customer is in possession of any two of the three C's to a sufficient degree and is deficient to a small extent as regards the third, the banker may not mind extending credit to him.

Credit agencies- The next question to be considered, is, how a banker is to obtain the necessary information regarding these three fundamentals of credit. No doubt, bankers have to make inquiries from those of their customers and other persons likely to have had dealings with the party whose credit is to be inquired into, as well as from credit information bureaux wherever they exist. Seyds in England, and Duns and Bradstreets in the United States of America serve as good examples in this respect. The last two named have, on account of their operations extending over a number of years, collected considerable information about business houses in North America and have been publishing, twice a year, reference books giving

information regarding the credit of concerns even in comparatively small towns. In addition to the publication of these reference books, they send complete reports about business concerns to their subscribers and these reports give information regarding the following points:—

(a) History of the business concern.
(b) Ownership and changes in the same.
(c) Digest of statements of assets and liabilities.
(d) Result of investigations in the trade.
(e) Fire records.

ABSENCE OF CREDIT AGENCIES IN INDIA—In India, such agencies have not yet come into existence, but there is no doubt that, with the development of credit, the field for this kind of work is bound to expand and such agencies will grow up, in the near future, in spite of the fact that there are certain inherent difficulties in the way of this kind of work in India. For instance, owing to their illiteracy, a large majority of the people are reluctant to give information about their financial position. Handicapped as they are, individual banks in India at present, generally maintain special departments for collecting information regarding the financial position of their customers. When such information is collected by banks through third parties, it cannot always be entirely relied upon, as the person or persons through whom it is collected, may, innocently or as it sometimes happens, intentionally, give either too rosy or too gloomy a picture of the financial position of the party concerned. An Indian system of credit agencies, suited to Indian needs and conforming to Indian customs, is the need of the moment.

EXAMINATION OF ACCOUNTS—When a bank is approached for credit facilities by persons or firms who happen to be its customers, an examination of their accounts and past dealings will be very helpful. For instance, a careful examination of the accounts of the person applying for accommodation, will show, whether or not, he is overtrading or is otherwise undeserving of the accommodation he asks of the banker. Similarly, if the bills discounted for him have always been duly honoured, it will count as a point in his favour.

OTHER SOURCES—Besides the abovementioned sources of information, the credit department of a bank has to scrutinize closely the newspaper columns, cuttings from which are taken and kept in the respective files of their customers. It is the duty of the credit department of a bank, not only to collect such information, but also to record it in a handy and easily intelligible form. The credit department of a well organized modern bank in the United States of America, supplies such information, not only to the officers of the bank, but sometimes also to its customers without making any charge therefor. In addition to this, a customer of a bank requiring accommodation from it, is, generally, asked to give certain information regarding the nature of the business and the purpose for which the accommodation is required, as well as the period for which it is required. The banker should further ascertain whether the accommodation required is by way of a loan, an overdraft, or discounting facilities (see Appendix A, Form Nos. 21 and 22, *post*).

PREFERENCE TO THOSE REQUIRING ACCOMMODATION FOR GENUINE BUSINESS—A commercial bank may not like to grant a loan for a long period. No hard and fast rules regarding the purposes for which loans should be sanctioned, can be laid down, as it may be necessary to discriminate more at one time than at another. However, when the money-market is

tight, preference should be given to those customers who require accommodation for genuine business requirements over those who require it merely for speculative purposes. Similarly, when a customer is living beyond his means, it is not proper for a banker to encourage his customer's extravagance.

TO ASK FOR COPIES OF BALANCE SHEETS AND PROFIT AND LOSS ACCOUNTS—Another important source of credit information to a banker is the copies of the customer's balance sheets and profit and loss accounts for the last few years, or a statement of his assets and liabilities, which should be, as far as possible, certified by a competent and reliable accountant. This is possible only in case of trading customers and is very necessary as it tends to reduce the risks of bad debts to the banker. Indian borrowers are generally reluctant to divulge their financial position readily to their bankers; but, if bankers insist on their customers submitting copies of their balance sheets and profit and loss accounts along with their loan applications, they will have no difficulty in obtaining the necessary information from the latter.

Examination of Statements; General Considerations.

The following general hints regarding the analysis of financial statements will, we trust, be found useful:—

NATURE OF THE BUSINESS—In the first place the banker should ascertain the nature of the trade or business—retail, wholesale or manufacturing—of the applicant for loan. This is necessary in order to consider the various items of the statement.

A RECENT STATEMENT—Secondly, the statement should relate to a fairly recent period as a statement showing the customer's position in some earlier years may not correctly reflect the true state of affairs at the time the person applies for accommodation. It is also desirable to see that the statement does not refer to a period when merchants, in the particular trade to which the borrower belongs, have their indebtedness at its lowest point. Moreover, the information given in the statement should be verified, as far as possible, by independent inquiries, particularly when the same has not been duly audited by a reliable firm of auditors.

DIFFERENTIATION OF LIQUID AND OTHER ASSETS—Thirdly, the statement should differentiate between the assets, which are of a *liquid* nature and those which are more or less fixed. Among the liquid assets may be mentioned cash in hand, cash with bankers, bills receivable, shares and bonds, and merchandise, raw, finished or in the process of manufacture. Similarly, liabilities should be distinguished, as short-term ones or long-term ones. Among the former are acceptances and amounts due to trade creditors and banks. Lands, buildings, plant and goodwill are some of the principal items of fixed assets, while mortgages and debentures are the chief amongst long-term liabilities.

LIQUID ASSETS TO BE SUFFICIENT TO MEET SHORT-TERM LIABILITIES—Fourthly, in examining a statement, the banker must see whether or not the would-be borrower can meet his current or short-term liabilities with the help of his quick or liquid assets. It is necessary to do so, because the continuation of the business may depend largely upon meeting the short-term liabilities as they mature. For instance, if a businessman is unable to honour his acceptances, his credit may suffer so much that he may have to close his business, although his fixed assets may be sufficient to meet all his liabilities. Bankers are usually satisfied if the liquid assets and short-term liabilities bear a ratio of at least 2 to 1.

DIFFERENCE IN THE BOOK VALUE AND REALIZATION VALUE OF ASSETS—Fifthly, it must be borne in mind that the nature of the assets given in the statement is ordinarily expressed to show their worth to the trader for use in a going concern. The banker should remember that normally they will fetch much less in case of a fixed sale.

CASH—We shall now deal separately with the principal items of the statement and comment upon them. One of the chief items, on the asset side of the statement of a borrower, is the *cash* in hand and at the bankers. In examining the amount shown as cash in hand the banker should see that it does not include I. O. U.'s of the proprietor or the manager. While auditing the accounts of a small bank which closed its doors during the banking crisis of 1913, the present author found, on examining the petty cash book of the bank, that 60 to 80% of the cash in hand, shown in the cash book, was represented by the I. O. U.'s of the managing director of the bank. Such a practice on the part of a borrower, should be discouraged. The banker should also see that the amount of cash in hand, at the time of the preparation of the statement of a company is not unduly inflated on account of the pending payment of the dividend declared.

BILLS RECEIVABLE—As regards bills receivable, the banker should ascertain, whether or not, they are strictly trade bills received from customers, to whom goods have been sold. Taking into consideration the usage of the trade in which the borrower is engaged, the banker should see that they are neither for unduly large amounts, nor for unusually long periods. Generally, a commercial bank is not prepared to lend money against bills for long periods, as, on account of their slow maturity, they are not considered as good security.

BOOK DEBTS AND ACCOUNTS RECEIVABLE—In examining the item of book debts and accounts receivable, the banker has to satisfy himself, whether, having regard to the business done, they are not unduly large, as some of them may not be recoverable. The nature of the debts should be ascertained whether there are any big debts that have been outstanding for a long time. By looking into some of these accounts, he can also find out whether they are good, or bad. It is also desirable to inquire whether the applicant for loan allows his customers to run their accounts on longer than the usual period for his particular trade. The customer should be asked to sign a statement, that sufficient provision has been made for doubtful debts.

STOCK IN TRADE—As regards the stock, it may not be feasible always to get the inventory made and its value estimated by an independent and reliable valuer, and, therefore, the bank may, generally, have to rely upon the borrower's valuation. However, in such a case, the latter should be required to state that no unsaleable and deteriorated goods have been taken into account and the valuation has been made according to the cost, or the market price, whichever was lower at the time of the closing of the accounts. Of course, the banker's acceptance of the valuation by the borrower will also depend upon the nature of the business, the relation of the stock to the sales, etc. The banker should also see that the stock carried is not in excess of the requirements of the concern and does not comprise of a large proportion of dead stock.

STOCK EXCHANGE SECURITIES—As regards the stock exchange securities held by the applicant for loan, the banker should try to find out the object with which they are carried as an asset. If the borrower has invested in securities, funds which he cannot profitably use in his own business, his credit position is strengthened, but, on the other hand, if the securities happen

to be of a speculative nature, the banker should regard them with some suspicion. As the latest market prices of such securities are available without any difficulty, the banker can easily ascertain their market value. However, this does not apply to all kinds of shares and stocks. For instance, the shares of several companies, floated in the last few years, are not easily saleable and the quotations, which appear against them in financial and other papers, being merely nominal, cannot be relied upon. Moreover, the banker has to see whether the shares, held by the customer, are fully or partly paid-up, because, in the latter case, they carry a further liability.

FIXED ASSETS—In the case of fixed assets, the banker should ascertain whether the land and buildings owned by the borrower are not subject to any incidental charges such as costs of up-keep, rates, taxes, etc. He has also to satisfy himself that the buildings are in good repair and adequately insured against fire, deluge and earthquake. He should not only take into account the current value of the property, but should also have due regard to its prospective value. In the case of plant and machinery, the banker has to see that they are in a good condition. He should find out the policy adopted by the applicant regarding the proper provision for the depreciation of such assets, so that, in case the building has to be pulled down, or the plant to be replaced, there should either be sufficient reserve available for the purpose, or the book values of such assets should be brought down so low as not to affect the position of the concern.

SUNDRY ASSETS— There may be certain sundry assets such as leaseholds, goodwill, patents, trade-marks, etc., whose values should, generally, be ingored by the banker, as, in the case of a liquidation of the business, they are not likely to fetch any price. It is to be noted that the banker has to take into account the break-up value of fixed and other assets, when considering applications for loans.

Liabilities.

On the liabilities side the banker should first see whether the capital is large enough for the nature and turnover of the business. If the capital is inadequate the business will be hampered. As already stated it is not the function of a bank to supply fixed capital to an industry because commercial banks keep their assets in a liquid form as far as possible.

ACCEPTANCES— Secondly the banker should satisfy himself that all the acceptances are for goods received. In the ordinary course of business, merchants accept bills drawn by persons from whom they purchase goods. If the applicant for accommodation accepts bills, drawn by persons other than those from whom he has purchased goods, or to whom he is indebted, the fact will stand as a point against him. The bills payable register gives the details regarding the names of the drawers, amounts of the bills, and the respective dates of their maturity. Although, in order to be sure about the total liability under the heading, it may be necessary to communicate with the trade creditors, generally the banker will be satisfied with enquiries through brokers.

ACCOUNTS PAYABLE—As book debts or accounts receivable represent goods sold on credit, the item of accounts payable represents goods bought on credit, for which neither payment has been made nor acceptance has been given. This item can be checked by a reference to the invoices received. It is desirable, that, considering the usage of the trade in which the applicant

for accommodation is engaged, these accounts should not be overdue; otherwise, it will clearly betray his inability to pay his debts on due dates. The amount under this heading should not be unreasonably large either. For example, if a concern sells goods worth Rs. 50,000 per month, its purchases should ordinarily be of less than that amount; and, if the credit term in that particular trade is one month, it should not owe more than the amount of its monthly purchases. In case a liberal cash discount is allowed in the trade and is taken advantage of, the amount of such accounts should represent invoices which have not been properly checked, or for which the period allowed for the claiming of discount has not expired. It is also desirable that, if a concern raises money by acceptances and other forms of borrowings, it should not owe large amounts under this heading.

OTHER LIABILITIES—When the concern applying for a loan is not banking with any other bank, the amount and the terms of the loan taken from the banker will be known to him. Similarly, the concern may owe money for taxes accrued but not paid and for unpaid salaries and wages. Sometimes, these amounts are a source of great anxiety to those responsible for the management of a concern.

PROFIT AND LOSS ACCOUNT—In addition to the statement of assets and liabilities, the banker should examine carefully the profit and loss accounts for the preceding few years, as it will show, whether or not, the business is a paying one. He should not only satisfy himself that all the expenses, chargeable to the profit and loss account, have been deducted before arriving at the figures of net profits, but also, that sufficient amounts have been set aside for the depreciation of certain assets such as plant and machinery, buildings, motor cars, furniture, etc., which need replacement after expiry of certain periods and for payment of income-tax, etc. He has to take care, that the profits shown are real and not fictitious.

The following financial statements and our comments upon them may interest the reader, as illustrative of the general principles stated above.

Traders.

I

INDIVIDUAL.

A

LIABILITIES.	Rs.	ASSETS.	Rs.
Bills accepted	3,000	Land and building	6,000
Band overdraft	2,000	Stock in trade	8,000
Other liabilities	3,000	Book debts	8,000
		Cash	2,000
	8,000		
Capital	16,000		
	24,000		24,000

A's balance-sheet shows that the net value of his business is Rs. 16,000 *i.e.*, he can pay every debt that he owes and still retain that sum, or, to put it differently, he can pay his creditors 48 annas per rupee, provided his assets realize their book values.

B

Liabilities.	Rs.	Assets.	Rs.
Bills accepted	20,000	Warehouse and fixtures ..	7,000
Bank overdraft	11,000	Stock in trade	33,000
Other creditors	3,000	Book debts	8,000
	34,000	Cash	2,000
Capital	16 000		
	50,000		50,000
Liability on bills discounted	10,000		

Statements of A & B compared—In comparing the two specimen statements given above, we find that while *A*'s capital is identical with that of *B*, the latter's stock is more than four times as big as that of the former. Should *B*'s stock depreciate by 25 %, his capital will be reduced to half. The item of fixtures will not realize a large sum. However, if all of his assets realize their book values, he can pay nearly 24 annas per rupee of his liabilities. Another weak point of the second statement is that the ratio of the liquid assets to the short-term liabilities is comparatively small. In *A*'s statement, the amount of his acceptances and bank overdraft is Rs. 5,000 against which he has Rs. 2,000 as cash and his stock and book debts amount to Rs. 16,000, or more than five times the amount of additional cash required by him to meet his quick liabilities, whereas *B* has book debts and goods worth Rs. 41,000 as against Rs. 29,000 of additional cash, which will be required to meet the liabilities maturing at an early date.

It appears, therefore, that *B*'s position compares quite unfavourably with that of *A*. In order to enable the reader to visualize the working of a banker's brain, while considering loan applications, we give below some examples of typical borrowers; see " Banker's Tests" by Francis R. Stead.

Industrial concerns.

The Amrit Spinning and Weaving Mills.

Application for continuance of Rs. 15,00,000 limit unsecured; and Rs. 7,50,000 discounts.

Liabilities.	Rs.	Assets.	Rs.
Paid up Capital	75,00,000	Land and building	3,50,000
Bank overdraft	12,00,000	Plant and machinery ..	44,50,000
Cash Credits	4,50,000	Stores	3,00,000
Trade creditors	9,75,000	Cloth and Yarn	39,00,000
Reserve Fund	5,25,000	Book debts	20,25,000
Profit and Loss a/c	3,75,000		
	1,10,25,000		1,10,25,000

The mill is an old, well-established and thoroughly up-to-date concern which has recently been equipped to manufacture fabrics with cotton and artificial silk yarns in combination. It has a good market for its specialities, and its manufactures are well known in the cloth market. It maintains fair profits even in bad times. It buys its cotton through its brokers on the Bombay Cotton Exchange. The management is all Indian, and the Swadeshi movement will ensure a good demand for its manufactures.

The facilities asked for will be readily granted.

II

FIRMS.

Messrs. Bose Brothers, Cloth Merchants.

This firm has applied for the continuance of the unsecured loan of Rs. 75,000. Some two years back, a new partner, who brought in Rs. 90,000, was taken in the business, which was then in want of more capital. The loan was not acknowledged by the new firm and the old account was continued as there was no change in the name of the firm. The balance sheet shows that the business is declining.

The banker will be well advised to require the debt to be renewed on the new firm's guarantee. Otherwise, in case of bankruptcy of the firm, he will not be able to proceed against the separate estate of the new partner. If the new firm is not prepared to guarantee the indebtedness of the old firm, advances should be recalled.

III

COMPANIES.

The Eastern Trading Co., Ltd.

The company wants a loan of Rs. 75,000 secured by the guarantee of its managing director. The concern is an old customer of the bank and its turnover is large. It has only recently been registered as a joint stock company with a paid-up capital of Rs. 60,000. Its total assets are valued at Rs. 2,25,000, comprised largely of properties, more or less mortgaged.

This is a case for due consideration, in which character and business ability will count; supposing the banker is perfectly satisfied on these points, it is a risk that might be hazarded. As so much depends on management, however, the managing director might well be asked to insure his life to some extent and lodge the policy with the bank. No doubt, by itself, life insurance does not offer much security, as its value is contingent upon payment of future premia, still the banker may accommodate the company, after duly ascertaining the extent to which the properties of the company, as well as the private means of its managing director are encumbered.

Collieries.

SOME GENERAL REMARKS—Mining in collieries is, generally, liable to a royalty at a fixed rate per ton on the coal extracted, subject to a minimum annual payment. If in any year, payment is made in respect of coal not won, the excess charge can be refunded in the succeeding years, in case the minimum is sufficiently exceeded. The question of minimum payment may assume seriousness in bad times. A certain percentage has to be written off the plant and machinery every year to accumulate as reserve to be used for

their replacement. Even in the case of collieries, free from rates or charges, as the asset is a wasting one, it is necessary to create a special redemption fund against the time when the coal will be exhausted. Wagons purchased on hire, instalment, or the deferred payment system, remain the property of the seller untill all instalments are paid. Throughout their life, which is limited, frequent expenditure on repairs is necessary.

I

Messrs. Mukerjee & Co., Coal Miners.

Application for Rs. 75,000, in addition to their old loan of Rs. 3,75,000, against first debenture charge.

Liabilities.	Rs.	Assets.	Rs.
Paid-up Capital	9,00,000	Leases and Developments .	6,00,000
Bank Overdraft	3,75,000	Loose plant etc. , ...	5,25,000
		Wagons	2,25,000
Other creditors	4,50,000	Stock	2,25,000
		Book Debts	3,75,000
Reserve	3,00,000	Profit and loss a/c	75,000
	20,25,000		20,25,000

This firm appears to be doing badly, and has no reasonable chances of meeting its liabilities. It is not a good risk. If it cannot find a satisfactory surety to guarantee the loan applied for, the application should be refused, although it is an old customer.

II

The Bengal Colliery Company Ltd.

Application for continuation of Rs. 15,00,000 limit against first debenture charge.

Liabilities	Rs.	Assets.		Rs.
Paid-up Capital	45,00,000	Property (freehold)		52,50,000
Bank	10,50,000	Cottages (freehold)		4,50,000
Creditors	9,00,000	Wagons	10,50,000	
Reserve	6,00,000	Less amount remaining to be paid	4,50,000	
Profit and loss	4,50,000		6,00,000	6,00,000
		Stock		4,50,000
		Book debts		7,50,000
	75,00,000			75,00,000

The positition of this company appears to be quite sound and the application for loan may be granted provided the colliery is not by any means fully worked. It may be desirable, however, in this case, to ascertain also,

whether the wagons were purchased on the hire-purchase system, as the wagons purchased on the hire-purchase basis remain, as has been said already, the property of the vendor, untill all instalments are paid.

Contractors.

I

Messrs. Yora & Co., Constructional Contractors.

Application for Rs. 15,000, in addition to old limit of Rs. 45,000 unsecured and discounts Rs. 30,000.

Liabilities.	Rs.	Assets		Rs.
Bank	30,000	Book debts ..	..	60,000
Creditors	75,000	Work in progress	..	2,25,000
Surplus	5,10,000	Stock	..	1,50,000
		Premises ..	..	75,000
		Plant and Machinery	..	1,05,000
	6,15,000			6,15,000

The applicants are known to be employed by people of good repute who are old customers of the bank.

If the assets and liabilities statements for the last three or four years show that the profits are satisfactory, the risk is worth taking.

II

The Western Building and Constructional Company, Ltd.

Liabilities.	Rs.	Assets.	Rs.
Paid-up Capital	7,50,000	Premises	3,75,000
Debentures	4,50,000	Plant and Machinery	3,00,000
Bank	1,50,000	Stock	1,20,000
Creditors	75,000	Work in Progress	1,80,000
		Retention moneys	1,50,000
		Book debts	75,000
		Good-will	75 000
		Profit and loss	1,50,000
	14,25,000		14,25,000

At present the bank holds a sound guarantee for Rs. 1,50,000, but the guarantor has recently died and the bank is asked to release his estate, taking instead a charge on the retention-moneys, which from the banker's point of view, are a very undesirable form of security. They are, of course, subject to the satisfactory execution of the relative work and defects may not be apparent for some time. They are also subject to equities. The bank should not comply with the request, especially in view of the debenture issue and adverse balance on profit and loss account.

Commission Agents.

Messrs. Malhotra Bros., Corn Brokers.

Application for Rs. 15,00,000 against hypothecations with 15% margin, to include confirmed documentary credits; trust facilities up to Rs. 3,75,000; and Rs. 7,50,000 discounts. They act as brokers to some extent, but they are also merchants on their own account. No balance sheet is produced, but they state their surplus to be Rs. 6,00,000. They have accounts with other banks as well. They had previously a small account with the bank, but they now approach it for increased facilities. Recently, however, irregularities have been detected in their discounts. It is fairly obvious that a considerable amount of their paper is of the accommodation type. They are also reported to have been speculating wildly and to have been severely hit.

This is not the time for extending facilities, but rather for requiring reductions in their existing liabilities to the bank. The bank would probably be better without the account, but it may not be possible to recover everything without a certain amount of effort and pressure. In these circumstances great care is necessary in granting trust facilities. The possibility of their buying and selling, in the same market, should be kept in view, as, in the event of insolvency, there is the risk that the bank's claim under a trust-letter might be encountered by a right of set-off. From its very nature there is a considerable element of speculation in the corn trade. The demand for wheat is enormous and widespread and prices must be mainly governed by world supplies and crop prospects. Values naturally fluctuate widely. However, any attempt to corner the market cannot be other than transient in its action by reason of the many large sources of production.

Miscellaneous.

I

The Koochperwanipur City Corporation.

Application for Rs. 2,00,000 on various mortgages; and for Rs. 50,000 unsecured. Advances are taken on different accounts, in connection with various works and undertakings. On other accounts, large credit balances are maintained, so that, to a considerable extent, the bank would be lending the corporation its own money. As regards Rs. 50,000, the accommodation is required for occasional and temporary use only, pending outside borrowings or collection of rates. The finances or the corporation are well-managed. It has its local Act, which confers large borrowing powers against the security of all rates, revenues, funds and properties, provided they are within the powers conferred by the Act, as qualified by any provisional order in force at the time and made in pursuance of the authority under the Act. No further sanction is required. A common form of mortgage has been adopted and its mortgages, to a considerable extent, are held by the public. Occasionally, it also raises money on redeemable stock and in other ways.

The request will be readily granted on reasonably remunerative terms.

II

Khan Bahadur Jamshedjee Poonawala,
Director, The Broach Cotton Co., Ltd.

Application for continuance of Rs. 1,25,000 limit against deeds of farm

lands, which cost him Rs. 1,75,000 at top of the market, at low rate of interest. The applicant is a locally influential man and there has been a rumour that the company's account may come to the bank. He has failed to carry out his repeated promises to reduce his loan. Apparently he has lost money in different concerns, although still reputed to be well-to do.

Further security should be insisted on and a definite programme of reductions arranged. The rate of interest should also be raised.

III

Messrs. A. K. Bose & S. H. Chatterjee,

Executors of the Will of the late Sir S. P. Gupta

Application for a loan of Rs. 50,000 against charge by the executors on marketable securities worth Rs. 50,000 and on Rs. 10,000, the credit balance of the deceased. They require the loan for the payment of the estate duty and undertake to obtain and produce probate as soon as possible. The applicants are introduced by reputable solicitors.

The risk would be regarded as a negligible one. The executors should be asked to give their joint and several undertaking to obtain and produce the probate, as, otherwise they would be only jointly liable. If the bank is not authorized to pay the amount direct to the revenue department, it might ensure in some other way, as for example by requiring the deposit of the receipt that the loan given to the executors for payment of the probate duty is utilized for the purpose.

Executors get their title to administer the estate from the will itself and have power to pledge specific assets forthwith. As in the case of trustees, so with regard to personal representative; a lender can claim against the estate only by standing in their shoes. If the executor cannot recover from the estate, the lending banker will be debarred from doing so.

IV

Dr. J. D. Lodhie, M.D.

Application for Rs. 1,00,000 against Rs. 1,25,000 worth of highly priced marketable securities, *e.g.*, ordinary shares in successful commercial and industrial companies, deferred stocks in leading trust companies, insurance companies, ordinary holdings, etc. The customer has not any considerable means outside his profession.

The accommodation should not be other than temporary. Highly priced securities of this character are subject to rather wide fluctuations, and, in the event of a sudden fall in their market prices, the margin may soon disappear. Not infrequently does it happen, that an accommodation, granted temporarily, degenerates into a permanent debt. The securities offered being highly priced, it would be preferable to have a bigger margin than usual, so as to guard against the possibility of any sudden fall in their market prices.

Different Forms of Loans Without Collateral Securities.

We shall now consider different forms of loans for which the banker does not get any collateral security and has to content himself, either with

the personal security of the borrower alone, or together with that of one or more other persons. It may be stated that in modern times, it is only in a very few cases that a banker would agree to lend money against the personal security of the borrower. When a borrower is unable to give suitable collateral securities for securing advances applied for by him, he is asked to get the guarantee of some other person, about whose credit the banker is satisfied.

DISCOUNTING OF BILLS OF EXCHANGE—The most important form in which bankers give accommodation without any collateral security, is the discounting of clean bills. This form of employment of a substantial part of the banker's funds is still very popular, particularly with the commercial banks in the leading European countries. In December 1943, the London Clearing Banks held bills including Treasury bills of the value of nearly £133 millions representing about 3·3% of their liabilities on account of deposits, current accounts and note circulation. The Scheduled banks in India and Burma had, at the end of 1943, inland usance bills amounting to Rs. 6·74 crores representing nearly 1.3 per cent. of their deposits.

It will be clear from the figures given above that in India, banks do not hold bills to any large extent. This is due to the the fact that in India, banks need not have liquid resources quite to the same extent as their *confreres* in England as ordinarily most of the deposits of banks in India are not payable on demand, or at very short notice. Moreover, the yield from Government securities is usually higher in India than in England.

Reasons for the restricted use of Bills in India.

THE SYSTEM OF CASH CREDITS AND RUNNING ACCOUNTS—The reasons for the limited use of commercial bills in India are not far to seek. (1) The system of running accounts and cash credits is an important factor responsible for the restricted use of bills in India. In the case of cash credits, interest is either paid only to the extent that credits are used, with half or quarter interest clause and the bank can withdraw credits, in the event of any deterioration in the position of the borrowing party. In India, a merchant who buys goods on credit, does not like to give his acceptances in exchange. He prefers to have a running account. He may either clear the account by the end of the year,—generally before Diwali—or, if so agreed upon, the balance may be carried forward.

(2) LACK OF FACILITIES FOR REDISCOUNTING—Before the Reserve Bank of India was started the Indian joint stock banks, in case of need, had to resort to the Imperial Bank of India for financial assistance and as the latter competed with the former in commercial banking business, the joint stock banks preferred to make use of their Government securities portfolio for loans from the then central banking institution instead of getting their bills rediscounted by it so as to avoid disclosing the names of their clients whose bills they had discounted. Moreover this facility of rediscounting was restricted to approved bills, *i.e.*, bills approved by the Imperial Bank of India, which, to make matters worse, offered no guidance to the other banks as to what constituted an approved bill. Consequently, a banker discounting bills, could not be sure as to which the bills discounted by him would be acceptable to the Imperial Bank of India for rediscounting. With the establishment of the Reserve Bank of India in 1935, facilities for rediscounting have been extended, under clause 2 (*a*) and (*b*) of section 17 of the Reserve Bank of

India Act, 1934, to the scheduled banks in respect of bills arising out of *bona fide* commercial transactions and maturing within ninety days, or nine months in case of agricultural paper.

(3) ABSENCE OF PUBLIC WAREHOUSES—There being no public warehouses and godowns in India for stocking produce, the documentary bills, which would be more popular with Indian Joint Stock banks, are conspicuous by their absence.

(4) SMALL NUMBER OF BANK OFFICES—A small number of bank offices in the country is another reason which accounts for the unpopularity of bills of exchange. For instance, if goods are sent from Bombay to Delhi and if the bank negotiating the bill in Bombay, has no branch in Delhi, a commission has to be paid to the bank at Delhi to collect the bill.

(5) THE STAMP DUTY—The stamp duty on bills, for sixty one days, used to work out roughly at about ½ per cent. per annum. However, we are glad to note that the stamp duty chargeable on inland bills of exchange and promissory notes payable otherwise than on demand and having a usance not exceeding one year has been reduced to annas two per thousand rupees or a part thereof. That the high rate of stamp duty was a great handicap to the free use of commercial bills was realized, as early as 1926, by the Hilton Young Commission, which recommended its abolition. The commission gave the example of America, where the stamp duty on bills was abolished soon after the reserve banking system was brought into existence. As against this, the reader's attention is invited to the recommendation of the Bombay Reorganization Committee to levy a stamp duty on cheques in the Bombay Presidency.

(6) NO HOMOGENEITY OF CUSTOMS GOVERNING HUNDIS—The lack of uniformity in the customs governing the *hundis*, is another reason for the relative unpopularity of commercial bills in India. If the *hundis* were drawn in a simple language, without the long prefatory salutations and unnecessary greetings and with their essential features definitely defined, they would circulate more freely, than they do at present.

Advantages of Discounting of Bills by Banks.

The following are the chief points in favour of the employment of funds by commercial banks, in the discounting of bills:—

(*a*) CERTAINTY OF PAYMENT ON DUE DATE—It is almost certain that the money invested in first class bills is realized on the due date, firstly, because a businessman who has accepted a bill endeavours to honour it, as otherwise his credit suffers; secondly, because, in case the acceptor fails to make the payment on the maturity of a bill, the banker will get his money from his customer, the drawer, or one of the indorsers more particularly the customer for whom he discounted the bill. Thus from the point of view of security as well as certainty of payment on the due date, the bills are considered so good, that the late Mr. George Ray, the author of "The Country Banker" considered them the best form of banking security, in preference even to Consols.

(*b*) EMPLOYMENT OF FUNDS FOR A DEFINITE PERIOD—The banker is able to employ his funds for a definite period and by judicious selections of the

maturities of the bills he can so arrange the investment of his funds, as will enable him to meet all the foreseen demands on him, without keeping his funds idle for any time. For instance, if a banker receives a deposit of Rs. 1,00,000 for three months, he can use the amount in discounting bills which will mature just a day or two before the deposit falls due.

(c) LIQUIDITY—These bills constitute securities of a very liquid nature and when a banker finds it necessary to strengthen his cash reserve, he need not go on buying new bills with the amounts which he receives in payment of the matured bills. He can hold back his funds till the time arrives, when he considered it no longer necessary to keep a large reserve. In case of urgent or unforeseen demands, the banker can convert the bills, held by him into cash, by having them rediscounted with the central banking institution of the country. Thus, a bank employing a very large part of its funds in bills, can even do with a comparatively smaller reserve than another bank, whose bill portfolio is small.

(d) FREEDOM FROM FLUCTUATIONS IN PRICES— As compared with stock exchange securities, commercial bills have also the advantage of not being subject to any appreciable fluctuations in prices. No doubt, with changes in monetary conditions or credit policies, fluctuations in the discount rate do take place and thus the rates at which a banker can get his commercial paper rediscounted may vary, but the variations are comparatively small and are of no material consequence even if the banker is compelled to convert his bills into cash.

(e) HIGHER YIELD—The yield from the discounting of bills is slightly higher than that from loans or advances when the rates charged are equal, because, in the case of the former, the interest known as discount, is deducted at the time of discounting the bills, whereas, in the latter case, it becomes payable only when the principal falls due or is payable quarterly, half-yearly, or yearly. The following table shows the difference in return, per cent. per year between interest on loans and discount on bills :—

By interest.	By discount.	By interest.	By discount.
1%	1.0101 %	6%	6.3829 %
2%	2.0408 %	7%	7.5268 %
3%	3.09278 %	8%	8.6956 %
4%	4.1666 %	9%	9.8901 %
5%	5.2631 %	10%	11.1111 %

If a banker invests Rs. 1,00,00,000 in discounting commercial paper for three months at 5 per cent. and another banker invests an equal amount in loans for the same period and at the same rate, the former is able to earn about Rs. 6,600–4–0 more than the latter, as the discount is deducted in advance, whereas the interest becomes due only on the expiry of the period of the loan.

(f) NEW ACCOUNTS—Parties who have to make payments of bills generally open accounts with banks holding bills drawn upon them.

Classes of Bills.

Bills discounted by banks belong to one of the following categories: (*a*) clean bills, (*b*) documentary bills and (*c*) bills drawn under credit. We shall deal here with bills of the classes (*a*) and (*b*) and leave the treatment of bills of class (*c*) to the last chapter of the book.

Precautions in Discounting Bills.

GENUINE BILLS OR KITES—As against the advantages stated above in favour of this form of employment of funds, certain precautions are necessary and may be noted here. In the first place, the banker should see that the bills he discounts, are genuine commercial bills and not in the nature of accommodation paper, as the former have the advantage of being backed up by goods while the latter, is without any real backing. For example, when a cloth merchant in Calcutta buys a few bales of dhoties from a Bombay merchant, and, being unable to pay cash for this purchase, accepts a bill drawn upon him by the Bombay merchant, he hopes to sell the goods and meet his acceptance with their proceeds. Thus, the bill is backed up by actual goods—dhoties. On the other hand, if the bill discounted is a "kite" or accommodation paper, which is merely a means between the drawer and the acceptor of raising money, it will not have such goods as a backing. The proceeds of such a bill may be utilized, not in the actual purchase of fresh goods, but either in the payment of certain expenses or antecedent debts. Although, it may appear to be difficult to distinguish between the bills of one class from those of the other, a banker, generally, does not experience much difficulty in differentiating between the genuine bills and the accommodation paper. For instance, if a doctor accepts a bill, drawn by a cotton merchant, the natural presumption is, that the bill is more in the nature of an accommodation paper to which the doctor as a friend of the cotton merchant has put his signature. The question which the banker has to put to himself, is, whether or not, the bill is likely to have been issued as the result of some actual commercial transaction between the drawer and the acceptor. It should also be remembered that Bills, given in payment of fixed assets such as buildings or machinery, should be avoided, as such bills cannot be regarded as liquid.

DOCUMENTARY OR OTHER BILLS—Secondly, the question, whether a banker should buy commercial paper bearing certain names, depends not only upon the credit of the parties, but also upon the class to which the bills belong. For instance, the banker need not make thorough inquiries about the credit of the parties in case of documentary bills to which documents of title to goods, such as bills of lading, railway receipts, insurance policies, or invoices, are attached, particularly when the goods concerned are necessaries of life. In case of dishonour of such a bill by the drawee, or in the event of any difficulty arising in connection with the realization of the amount from the drawer, the goods can be sold and the chances of loss to the banker minimized. However, it must be remembered that such bills should not be purchased from parties whom the banker does not know well, as there are certain risks attached to the business. For instance, the documents accompanying the bills, may not be genuine, or the goods may not correspond with their description, as given in the documents.

CREDIT OF THE PARTIES—*Thirdly*, the banker has to satisfy himself regarding the credit of the drawer, acceptor and other indorsers. We have already stated, how the credit department of a good modern bank collects and keeps handy, fairly detailed information regarding the credit of the different merchants whose names are likely to appear on commercial bills. If the various parties to the bill are the customers of the bank, fairly reliable information can be gathered from its own records.

BILL COMPLETE AND FREE FROM DEFECTS—*Fourthly*, the banker should see that the bill is complete in every respect. Not only must its form comply with the requirements of law as explained in an earlier chapter, but also the bill must not be overdue or defective in any other respect. In case the banker comes to know of a defect in the title of his customer to the bill, he should refuse to discount it, as then the banker cannot be treated as a holder in due course (Negotiable Instruments Act, 1881. s. 9), and consequently his title to the bill will be rendered defective.

PENALTY FOR FAILURE TO PAY STAMP DUTY—*Fifthly*, the bill must be duly stamped and conform to the provisions of the Indian Stamp Act, 1899. In this connection attention is invited to Appendix E in which are explained not only the duties leviable on all important documents dealt with by banks but also the general principles of the stamp law.

CUSTOMER'S ACCOUNT CREDITED—When a banker decides to discount a bill, he will proceed to credit his customer's current account with the amount of the bill, less discount charged. The bill is then entered in the Bills Receivable Book, and its date of maturity noted in the Bills Receivable Diary.

LIABILITIES OF THE PARTIES—As we have already stated the general principles governing the presentment for acceptance and the presentment for payment, we now propose to conclude this chapter by considering the liabilities of the parties to the bill in the event of its dishonour. The drawee of a bill, after he has accepted it, becomes the principal debtor, but till then, the holder of a bill has no claim against him and he should look to the drawer and the indorsers for the payment of the same, in case the drawee refuses to accept it. The drawer by drawing the bill, undertakes that, on its presentment, it shall be duly accepted and paid according to its tenor. He also promises that, in case of its dishonour, he will compensate the holder, or any indorser, who is compelled to pay it, provided the necessary proceedings on its dishonour are duly taken. The indorser, by indorsing the bill, attests that the bill was complete when it left his hands. The liability of the indorsers stands in the order in which their names appear on the bill. The first indorser is liable to the second and subsequent indorsers, the second to the third and the subsequent indorsers, and so on.

DISHONOUR OF BILLS—On the dishonour of a bill discounted by the bank, the amount of the bill plus charges in connection with the dishonour should be debited to the customer's account, provided his credit balance, or the overdraft limit, is not exceeded. In such a case the bill should be returned to the customer, together with the advice about the debit, and no separate notice of dishonour is necessary. However, if the customer's balance or overdraft limit is not sufficient to cover the amount, the bill should be debited to overdue bills account so as to avoid loss of recourse to other parties on the bill; notice of dishonour should be sent to the customer, who

should be requested to pay the amount due. In case the bank's customer is not a substantial party, notice of dishonour should be given to all such prior parties as the bank may like to proceed against any one or more of them for payment of the amount.

Rule governing the dispatch of notice of dishonour.—When the person giving notice and the one to receive it reside in the same town, the notice must be sent off to reach the other party on the day after the dishonour; when they reside in two different places the notice must be despatched at the latest on the working day after the day of the dishonour. It must be remembered that the holder of a bill, loses his right to claim the amount from the previous indorsers if he fails to inform them without undue delay of the fact of dishonour and all other parties against whom he wishes to press his claim. This duty on the part of a banker is sometimes ignored with the result that he loses his right against immediate indorsers. Such negligence results particularly in cases of documentary bills. The drawee may request the bank's agent to give him some time to pay the bill on the plea that the banker is protected by the goods. It is, however, to be remembered that the fact whether a bill is documentary or not is of no consequence so far as the duty of the banker to give notice is concerned. The need for precaution is greater in case one banker gives bills received from his customer to another banker for collection or sells bills to that banker. If indulgence is requested by the drawee, the banker must have written instructions from all parties liable on the bill against whom he wants to have recourse or to whomsoever otherwise he would be liable.

CHAPTER X

GUARANTEES

GUARANTEES AS SECURITY FOR BANKER'S ADVANCES—When banker's advances are not secured by means of collateral securities and the personal security of the borrower is inadequate, guarantees play an important part. The need for this form of security arises not only when an applicant for loan cannot offer any tangible security, but also when the banker finds that his customer's position is weakened or the depreciation in the value of the collateral security has resulted in leaving the banker's advances inadequately secured.

GUARANTEE DEFINED—Section 126 of the Indian Contract Act, 1872 (IX of 1872), defines a contract of guarantee as "a contract to perform the promise, or discharge the liability, of a third person in case of his default." The same section further declares that "a guarantee may be either oral or written." For instance, if Mr. S. P. Kapoor, wanting a loan of Rs. 500, induces his friend Mr. M. N. Mehta to promise to Mr. B. D. Shroff to repay the loan in case of Mr. Kapoor's default, the contract is called a contract of guarantee. It will be seen that there are three parties to this contract; Mr. S. P. Kapoor is the principal debtor, Mr. M. N. Mehta is the surety and Mr. B. D. Shroff is the creditor. In order to make the surety, Mr. M. N. Mehta, liable on his contract of guarantee, which itself is contract of secondary nature, there must be a principal contract by which the primary debtor, Mr. S. P. Kapoor, should promise to pay the amount to the creditor, Mr. B. D. Shroff. Unless there is such a contract there can be no default by Mr. Kapoor and therefore the contract of guarantee cannot hold good. However, under certain circumstances, a surety is liable though the principal debtor is not. For instance, where the original contract is void as is the case of a contract with a minor, the surety is liable not only as surety but also as a principal debtor. In such a case the contract of the so-called surety is not a collateral but the principal contract. It is not necessary that the principal contract must be in existence at the time the contract of guarantee is made; the original contract by which the principal debtor undertakes to repay the money to the creditor may be about to come into existence.

CONTRACT OF INDEMNITY—Here it is necessary to draw the attention of the reader to contracts of another kind known as contracts of indemnity which appear at first sight to be analogous to contracts of guarantee. Section 124 of the Indian Contract Act, 1872 gives the following definition of a contract of indemnity:—

> A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a "contract of indemnity."

When the consignee of a cargo wants the steamship company to deliver the same without the production of the bill of lading, he is required to give an indemnity bond by which he undertakes to compensate the steamship company for any loss which the company may have to suffer, as the result of delivering the goods to him without the production of the bill of lading. Similarly, in case of the loss of the railway receipt, the goods may be delivered to the consignee on his signing an indemnity bond.

GUARANTEE DISTINGUISHED FROM INDEMNITY—It will thus be clear, that contracts of guarantee differ from contracts of indemnity that in the former case there must be two contracts, a principal contract between the borrower and the lender, and a secondary one between the lender and the surety, whereas in the latter case there is only one primary contract. In the case of guarantees, it is the principal debtor who is primarily liable and the guarantor's liability comes into existence only when the principal debtor makes default. But in the case of an indemnity, the promisor is the only person who becomes liable to the promisee, if the latter suffers a loss on account of his doing something at the express desire of the former. There is a further point of distinction between indemnities and guarantees which must be borne in mind. A banker may safeguard himself against loss arising from the non-payment or non-performance of an obligation either by obtaining a guarantee or an indemnity from a third party. As far as the banker is concerned, his position will be the same whether the payment is made by the surety or the obligation is performed by the indeminifier or the surety but the consequences in law resulting to a surety and an indemnifier after the payment of the debt or the performance of the promise are quite different. If a surety pays the debt or performs the obligation he can file a suit in his own name against the debtor. An indemnifier, however, cannot do so. The test which is applied to determine whether the contract is one of gurantee or indemnity is whether the obligation has been undertaken at the debtor's request in which case the contract is one of guarantee. If the obligation is undertaken without any request, express or implied, of the debtor, the contract is one of indemnity (*Periamma* v. *Banians & Co.*, I.L.R. 49 Madras 156). In England, contracts of guarantee are required by the Statute of Frauds to be in writing, though contracts of indemnity can be made orally. In India, however, contracts of neither kind need necessarily be executed in writing.

PROS AND CONS—It does not appear quite necessary to make any detailed comparison between guarantees and other kinds of securities. Guarantees are accepted by bankers, firstly, because they are adaptable to different circumstances actual and possible, and secondly, because they do not entail many positive obligations on the part of the banker. Thirdly, it is fairly easy to obtain guarantees. As an off-set to these advantages, however, it must not be forgetten that such a security is entirely dependent upon two things, firstly, the initial and continued solvency of the surety, and secondly, the proper drafting or the completeness of the form of the agreement itself. The banker has to satisfy himself about the initial and continued solvency of the proposed guarantor, because there being no tangible security, the loan in case of the debtor's default will have to be reimbursed by the guarantor. It must not be forgotten that a person's fortune may sometimes change over night. It is the experience of many bankers that a first class guarantor is sometimes hit hard by the circumstances which have also brought about the debtor's default.

REMEDIES FOR THE APPARENT DRAWBACKS—No banker will ordinarily accept the guarantee of a person of whose credit he knows next to nothing. If a gurantee is to be of any real value, the banker should make the necessary inquiries about the character and financial position of the proposed gurantor, as, if the guarantor's financial status is unsatisfactory, the contract of gurantee is of no value. If the gurantor is a customer of the banker, the latter's credit department will be in a position to report upon the financial

position of the former, otherwise other sources of information may have to be resorted to. As a rule, bankers are reluctant to accept the gurantees of persons with no means other than fixed incomes terminating with death. However, if such a guarantee is to be accepted, it is very desirable for a banker to take out an insurance policy on the life of the guarantor. As to the second drawback, namely, the possible loopholes in the form of the guarantee which are likely to allow the guarantor to evade his liability, it may be mentioned that as nowadays almost every bank has printed copies of its own guarantee form drafted by competent solicitors, no difficulty should arise on this score (see Appendix A, Form Nos. 23 and 23 (*a*), *post*). Every provision contained in the form is inserted for a definite reason and it will be a blunder on the part of a banker to accept a guarantee which is not drawn up according to the approved form. The length and complicated nature of the document may be objected to, on the ground that prolixity is no true test of efficiency, but the banker has to safeguard his interests against all possible contingencies he may have to face, and it is better to err on this side, if error is necessary, than on the side of having an agreement with defective and incomplete provisions. If he accepts a guarantee in the form of a simple letter, the guarantor may find it easy to obstruct and evade his liability by setting up a number of defences, which may, or may not, ultimately avail. For instance, he may accuse the banker of having varied the terms of the original contract in one way or the other. Besides, it will be open to him to allege that the bank has taken a new security from the customer in lieu of the original one, or, that it has discharged the customer, or a co-guarantor, or that it has been guilty of negligence in perfecting securities entrusted to it by the customer. Where for one reason or the other it is not possible to obtain the advice of a lawyer regarding the contract of guarantee, or the banker has no printed form, his own knowledge and experience would help him in making his legal position unassailable.

Who can enter into Contracts of Guarantee ?

MINORS, LUNATICS AND MARRIED WOMEN - As already stated, contracts with minors and persons of unsound mind are void. It is, therefore, clear that bankers should never accept guarantees of such persons. Although married women can give valid guarantees, which will bind their separate property such as *Stridhan*, the banker is generally reluctant to accept their guarantees, because, if the relations between the principal debtor and the guarantor become strained, or, with a view to evade liability a married woman may plead that, when she signed the contract, she was not a free agent and acted under the coercion or undue influence of her husband, particularly when he himself or a relative or a friend of his happens to be the principal debtor. As, generally, courts have a tender heart towards the fair sex, the above plea is likely to be successful, even though the evidence in support of the same may not be as convincing as is required in other cases. Consequently, a wife becoming surety for her husband, an expectant heir for his father, or in other cases where the plea of undue influence is likely to be put forward, are instances in which the banker should be particularly careful.

PARTNERSHIPS—A partner has no implied powers to bind his co-partners by entering into a contract of guarantee in the firm's name, unless the ordinary business of the firm is such as may require the making of such contracts. Therefore, in other cases of a gurantee by a firm, it is desirable to see that

either the partner signing on behalf of the firm has express authority to bind the firm by such contracts or that all the partners sign the contract of guarantee.

REGISTERED COMPANIES—As regards the powers of a company registered under the Indian Companies Act, 1913, to make contracts, it has already been stated that such powers depend upon the company's memorandum and articles of association. No doubt, certain other powers are inferred which can be exercised according to the articles of association, as in the case of most companies the memorandum, after setting out in detail the various objects of the company, winds up with the general clause empowering the company to do "all acts and things incidental to the carrying out of its objects." In the case of a trading company, the ordinary commercial transactions requisite for the proper conduct of its business are impliedly within its powers, even if they are not expressly provided for in the memorandum. However, to imply a power to borrow money for the purpose of the company's own business is a very different thing from implying a power to guarantee advances to other people, even when they happen to be customers of the guaranteeing company. A power to give guarantee would not easily be inferred, especially as the courts are jealous of the doctrine of implied powers and do not readily read such a power into the company's constitution unless, in consideration of the nature of the business of the company, they are satisfied as to its need. However, the best legal opinion on the point is, that a company cannot stand as surety, unless it is expressly authorized by its memorandum and articles of association to do so. In *Friary Holroyd and Healy's Breweries Ltd.* v. *Seckham*, October 26, 1922, Chancery Division, T. L. R., where a company had power by its memorandum to "subsidise or otherwise assist" any person or company with whom it had business dealings, it was held that it had power to guarantee the debentures of another company. However, such powers must be exercised in furtherance of the objects of the company.

Other precautions. Before accepting the guarantee of a registered company, the banker should also satisfy himself that the company is duly registered according to the requirements of the Indian Companies Act, 1913, as otherwise considerable legal difficulty may be experienced in seeking to enforce the guarantee either as against the assets of the unregistered association or its members: who carry on the business of the association. Where a company resorts to borrowing in order to obtain the capital which should properly be furnished by its shareholders, a lender saddles himself with a permanent advance. It is not uncommon that a one-man company is registered as a limited company, so that the promoter may not risk his private means. In receiving debentures as security, a banker will be well advised to make the advance by way of loan. When a company experiences a setback and the banker has already accepted its guarantee, he becomes involved in risks when the borrower is unable to meet his liability. He may consequently decide to take a debenture covering the company's assets, but should a winding up ensue within three months of the issue, the debenture so far as the floating charge is concerned, is invalid, except to the extent of fresh advances made by way of consideration, unless it can be proved that the company was solvent immediately after the issue of the debenture. Where a company guarantees another company's debentures then, in the event of the debtor company winding up its business, the interests of the preference shareholders of the guarantor company, who are entitled to a preference on

assets for the amount of their shares over holders of ordinary shares, are unjustly subordinated to the extraordinary obligation of the guaranteed debt for the benefit of another company. Where a company enters into a contract of guarantee in respect of an *ultra vires* borrowing by another company, the guarantee cannot be enforced by a bank which has inadvertently allowed a company to borrow *ultra vires*. It is, therefore, desirable that bankers should not generally accept the guarantees of registered companies, unless their articles of association contain an express provision in this behalf. It is an advisable precaution on the part of the shareholders to question what benefit the company standing as surety is going to receive, or what consideration the guaranteeing company gets for undertaking the liability.

Consideration.

The contract of guarantee like other contracts is required to be supported by consideration. Consideration for a guarantee is defined by section 127 of the Indian Contract Act, 1872 as follows:—

> Anything done, or any promise made, for the benefit of the principal debtor may be a sufficient consideration to the surety for giving the guarantee.

Thus, it will be clear that it is not necessary that consideration should imply necessarily something done for the benefit of the guarantor but anything done for the benefit of the principal debtor is considered as an adequate consideration for the guarantor to make the contract valid. For example, if Mr. Hiralal asks Mr. Kashinath (the creditor) to forbear to sue Mr. Zutshi (the principal debtor) for a certain period and promises that if Mr. Kashinath does so, Mr. Hiralal will pay the amount in case of the default of Mr. Zutshi the forbearance on the part of Mr. Kashinath is good consideration for the guarantee. However, if Mr. Hiralal instead of asking Mr. Kashinath to forbear to sue Mr. Zutshi, asks Mr. Kashinath to withdraw a criminal proceeding against Mr. Zutshi, which is compoundable with the consent of the former, subject to leave of the court and if the court refuses to grant the necessary permission, the consideration here fails and Mr. Hiralal is, therefore, not liable to Mr. Kashinath.

CONTRACTS OF GUARANTEE NOT *Uberrimae Fidei*—Whether or not a contract of guarantee is one known to lawyers as *uberrimae fidei*, *i.e.*, one in the carrying out of which utmost good faith must prevail, has been a stumbling block even to classical legal authorities. On the one hand, it is argued that it is unnecessary for a bank—apart from participation in fraud—to volunteer any disclosure as to the state or history of the account, or its knowledge of the debtor's financial position or commercial credit, however important it may be for the guarantor to know these things. In a recent Madras High Court Appeal Case (*Imperial Bank of India* v. *Avanasi Chettiar* (1930), 53 Mad. 826 (831)), it has been held that the bank is under no obligation to volunteer to a surety any information as to the principal debtor's past indebtedness, when the surety does not ask for any information on the point. Indeed, the probable reason for requiring a guarantee is dissatisfaction with the principal debtor's credit. On the other hand, there are those who uphold the view that under exceptional circumstances, the banker is bound to volunteer such information. He must not conceal from the surety any secret arrangement he may have between himself and his customer, which is inconsistent altogether with the contract the surety is to sign. If a surety asks relevant question affecting the transaction, a banker has to answer them before the

surety signs the contract. Even during the continuance of the contract of suretyship, a guarantor may approach the banker and ask information regarding the extent of his liability on account of the guarantee given by him. However, this does not mean that the banker should forget his duty of observing secrecy with regard to his debtor's account. It has never yet been held by any court, at least to the knowledge of the present author, that it is within the banker's competence to discuss even with a surety the operations of the account and customer's business. According to the decision in *National Provincial Bank* v. *Glanusk* (1913), 3 K. B. 335 (339), the non-disclosure by the bank to the guarantor of their customer's overdrawn account of facts which led the bank to suspect that the customer was defrauding the guarantor did not invalidate the guarantee, as the bank owed no duty to bring its suspicions to the surety's notice. However, if questioned by the would-be surety, he must give the requisite information honestly and to the best of his ability, the occasion justifying even the disclosure of the customer's account, as "very little said which ought not to have been said and very little omitted which ought to have been said may suffice to avoid the contract." Even on these occasions, a banker can never be too careful while giving the essential information, as there is in all cases a real risk of misrepresentation. "Least said, soonest mended," would be a good motto for a banker in interviews relating to surety transactions.

EFFECTS OF MISREPRESENTATION OR FAILURE TO DISCLOSE MATERIAL FACTS.—The Indian law on the effect of misrepresentation or failure to disclose material facts in obtaining a guarantee is given in sections 142 and 143 of the Indian Contract Act, 1872:—

> Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent concerning a material part of the transaction, is invalid.

Section 143 runs as follows:—

> Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances is invalid.

THERE IS NO FREE CONSENT WHEN GUARANTEE IS OBTAINED BY MISREPRESENTATION.—As free consent on the part of all the parties to a contract is necessary, it is evident that no such free consent can exist, when the guarantee is obtained by means of misrepresentation regarding a material part of the transaction. Although it may be assumed that bankers in modern times are not likely to state deliberately what they know to be false or to wilfully create any false impression on the mind of a proposed surety, it is quite possible that a misrepresentation may be made inadvertently which may give the surety a chance to avoid his contract. It may, therefore, be stated that in any discussion or negotiation with the surety the banker should not say any thing even casually that would mislead the would-be surety. The following illustration will make clear the effect of an inadvertent statement. In the old case of *Stone* v. *Compton* (1838), 5 Bing. New Cases 142, the defendant joined as surety for the bank's customer in a promissory note for £2,000. The bank took also a mortgage for the advance. At the time of the advance, the customer was already indebted to the bank to the extent of £800, but in the mortgage deed there was a recital stating untruly, that the sum of £800 had in fact been paid. The deed was read over by the bank's representative to the surety. The court held that the untrue recital so read over to the guarantor vitiated the contract of guarantee. As an instance of misrepresenta-

tion by concealing a material part of the transaction, we give the following extract from the judgment of Warrington J. in *Hewatson* v. *Webb* (1907), 1 Ch. 537, where the misrepresentation was only as to the contents of a deed known by the defendant to deal with his property : *non est factum* was held to be no defence. Justice Warrington said, " I have had no case cited which carries the plea further than that a misrepresentation as to the nature and character of the document avoids it."

EFFECT OF CONCEALMENT ON GUARANTEE—Unlike contracts of insurance, the ideal of utmost faith is not, as already stated, the basis of the contract of suretyship as regards the duty of disclosure. There does not appear to be any material difference between the English law and the Indian law as regards the effect of concealment of fact on guarantees, although the language of section 143, Indian Contract Act, 1872 might give the impression that an unqualified duty of giving to the guarantor complete information regarding all the material facts is imposed upon the creditor. " Keeping silence " as used in section 143, implies intentional concealment as distinguished from mere non-disclosure, and the withholding must be fraudulent, as is necessarily the case when a material circumstance is intentionally concealed (*Balkrishna* v. *Bank of Bengal,* 15 Bom. 585 (591), followed in the *Imperial Bank of India* v. *Avanasi, Chettiar,* (1930) 53 Mad. 826 (831)).

The following illustrations will, it is hoped, make the position clear to the reader :—If Mr. Bhattacharya, a banker, engages Mr. Gupta as a cashier who subsequently fails to account for some money received by him on behalf of his employer and is therefore called upon to find surety for his proper rendering of accounts of the money to be received by him and Mr. Deshpande gives the guarantee at Mr. Gupta's request the guarantee will be held invalid, if Mr. Bhattacharya fails to acquaint Mr. Deshpande with Mr. Gupta's previous conduct. Similarly, if at the request of Mr. Currimbhoy, Mr. Laljee gives a guarantee for the existing and future liabilities of Mr. Currimbhoy to Mr. Peerbhov up to a certain sum, which limit has already been exceeded, the contract of guarantee is voidable on the ground of concealment of a material fact, unless the creditor informs the surety of the fact before he signs the contract of guarantee. However, it should be stated that it is no part of a banker's duty to volunteer a full and detailed disclosure of his previous dealings with the debtor. In *Wythes* v. *Labouchere* (1858), 3 De. G. and J. 593, Lord Chancellor Chelmsford speaking of the creditor said, " He is not bound to inform the intending guarantor of the matters affecting the credit of the debtor or any circumstances unconnected with the transaction in which he is about to engage which will render his position more hazardous." In *Westminster Bank Ltd.* v. *Cond.*, B, a customer of the bank who had already an overdraft secured by two guarantors and by the deposit of life policies, wished to increase his overdraft. The bank expressed its unwillingness without a further guarantee. The defendant interviewed the bank manager who on being asked about B's prospects said that in view of the salary which B was earning he should be able to pay off his overdraft and in a reasonable time. The defendant did not ask the manager whether B's account was already overdrawn. B became an insolvent but the defendant refused to meet his liability on the ground that the manager of the bank was under a duty to disclose the fact that B's account was already overdrawn. The judgment was given in favour of the bank as the judge held that there had been nothing to bring to the notice of the manager that the existing overdraft could be material for consideration by the defendant whether to give his

guarantee, and that in the circumstances the manager owed no duty to disclose the facts that there was already an existing fully secured overdraft.

Scope of Guarantee.

In determining the scope of guarantee, two important points arise :—

Is the guarantee a *specific* one, that is, one intended to apply to a particular debt, or a *continuing* one which extends to a series of transactions between the banker and his debtor? In case of a specific guarantee, the guarantor's liability will cease as soon as the particular advance or advances are repaid. For instance, if Lala Balak Ram wants to borrow a sum of Rs. 500 from the Central Bank of India Limited, and Lala Ram Saran gives a specific guarantee, he will not be liable if Lala Balak Ram pays back the amount borrowed and takes a fresh loan from the bank. On the other hand, if the guarantee is to be a continuing one, the guarantor will be liable for the balance irrespective of the payments made by the principal debtor, as they would go towards the payment of earlier advances. For this reason bankers always prefer to have a continuing guarantee, so that the guarantor's liability may not be limited to the original advance but should also extend to all subsequent debts. By section 38 of the Indian Partnership Act, 1932, which lays down that "a continuing guarantee given to a firm or to a third party in respect of the transactions of a firm, is, in the absence of agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm." That is to say, except where an agreement to the contrary exists a guarantee extending to a series of transactions, given by a surety to the firm as creditor, or to a third party on behalf of the firm as principal debtor, is revoked as to future transactions by a change in the constitution of the firm (which may occur by the death, insolvency or retirement of a partner or by the admittance of a new partner. A banker has to see that such contingencies are provided for in the continuing guarantees he receives.

Application of gurantee to the whole or part of the debt.

Where a guarantee applies to the whole debt, but the guarantor's liability is limited to a specified amount, the banker after the failure of the principal debtor can claim from the guarantor the maximum amount guaranteed by him and place the same to the credit of suspense account and prove his claim for the whole debt against the estate of the debtor. The dividends received from the debtor's estate can be credited to the debtor's account, and the amount received from the guarantor can be transferred from the suspense account to the debtor's account. In case there is a surplus, it is returned to the guarantor. For instance, if Mohan Lal guarantees advances made to Ratan Chand by the Yokohama Bank Ltd., but limits his liability to Rs. 1,000, and if on the failure of Ratan Chand it is found that he owes Rs. 2,000, the bank will call upon Mohan Lal to pay Rs. 1,000. It can then prove the whole of its claim against its debtor's estate which pays a dividend of eight annas per rupee. The bank will receive Rs. 1,000, from the estate and this amount together with the amount received from Mohan Lal will satisfy its claim. Thus, Mohan Lal, the guarantor, will suffer a loss of Rs. 1,000. However, if the guarantee is applicable only to a part of the debt, the guarantor on the payment of the amount of his liability to the banker, can stand in the shoes of the banker to the extent of the amount paid by

the guarantor and prove his claim against the estate of the debtor. Thus in the illustration given above, if the guarantee applies to half the amount of the debt, Mohan Lal on paying the amount of Rs. 1,000 to the Yokohama Bank Ltd., will be entitled to prove his claim against the estate of Ratan Chand and will receive Rs. 500. In this case the Yokohama Bank Ltd., will be entitled to prove its claim for Rs. 1,000 only against the estate of Ratan Chand and will thereby lose Rs. 500. This was so decided in *Ellis* v. *Emmanuel* (1876), 1 Ex. D. 157. It was there observed that "*prima facie* a guarantee for a floating balance is merely for a part of a debt co-extensive with the amount of the guarantee; but whether the guarantee is for the whole debt or a part only is a question of construction for the court." In *Anglo-Californian Bank* v. *London & Provincial Marine Insurance Co.* (1904), 20 T.L.R. 665, a policy of guarantee signed by the five persons for £750 was held to be a guarantee by each for the whole amount, with a liability limited to £750. Moreover, it should be noted that this limitation applies to the extent of the guarantor's liability and not to the amount to be advanced, because in the latter case the guarantee may be totally invalidated if a sum exceeding the amount mentioned in the contract of guarantee is lent. For instance, if the guarantee is worded as follows:—"In consideration of your advancing to A. B. Yusafalli a sum not exceeding Rs. 500 I guarantee the payment of that amount," and if a sum exceeding Rs. 500, is advanced to A.B. Yusafalli, the guarantor may escape his liability on the ground that the condition laid in the contract of guarantee is not adhered to by the banker.

Obligations of the Banker.

NOT TO VARY THE ORIGINAL TERMS—In the absence of an agreement to the contrary the banker must not, without the surety's consent, vary the original terms of the contract between himself and the principal debtor, as any such change of terms will discharge the surety from his obligations (Indian Contract Act, 1872, s. 133). For instance, *A* guarantees *B's* conduct as a cashier in *C's* Bank. Afterwards *B* and *C* contract without *A's* consent that *B's* salary shall be raised by Rs. 100 a month if he guarantees one fifth of the losses in overdrafts. If the bank suffers a loss on account of an overdraft, *A* will not be liable to make good the same. Under the English law the variation of the terms without the consent of the surety is permitted as long as the surety's interests are not prejudiced. This principle seems to have been followed in India also by the High Court of Bombay (*Balkrishna* v. *Bank of Bengal*, 15 Bom. 585). However, in India bankers take specific powers from the guarantors to vary the terms of the contracts between themselves and their principal debtors and thus their rights against the sureties are not affected.

NOT TO RELEASE THE DEBTOR—The banker should not release the principal debtor or do any act or be guilty of an omission the legal consequence of which is the discharge of the principal debtor (Indian Contract Act, 1872, s. 134). For instance, A guarantees a loan granted to *B* by *C* and afterwards *B* becoming embarrassed, contracts with his creditors including *C* to assign to them his property in consideration of his release from their demands. *A* is discharged from his suretyship on the ground of C having released *B*.

EFFECT OF RELEASE OF A CO-SURETY—Where there are co-sureties, a release by the banker of one of them does not discharge the others; neither

does it free the surety so released from his responsibility to the other sureties, (Indian Contract Act, 1872, s. 138). This is so, because by the release of one of the sureties the bank does not release him from his liability to his co-sureties. An undue preference given to the discharged surety is bound to affect adversely the other sureties. It must, however, be noted that a release of a surety from his personal covenant is entirely different from a release of any property charged to meet the surety's contingent liability. In *Smith* v. *Wood* (1929), 1 Ch. 14, twelve persons by a memorandum of charge deposited the title deeds of their respective properties and certain policies of insurance to secure payment to the defendant of sums due from a company whose overdraft he was guaranteeing. One of the depositors prevailed upon the defendant to hand over the title deeds of three houses which she had deposited with the defendant so as to enable her to raise money and she mortgaged the houses to a building society to secure a loan. The company whose overdraft defendant had guaranteed went into liquidation and defendant became liable for £5,000 on his guarantee. On his proposing to realize the properties charged other than the property released from the plaintiffs, seven of the depositors brought an action for a declaration that their properties were released from liability. It was held that the defendant's act had brought a substantial alteration in the contract connecting the parties *inter se* and had also deprived the plaintiffs of the right to have all the properties marshalled so as to cause the debt to fall rateably on all the properties. The sureties who had not consented to the alteration were held to be discharged.

Effect of negligent or improper handling of securities—Any negligent or improper handling by the banker of the securities belonging to the debtor which reduces their value, will diminish the liability of the guarantor to the extent to which the securities depreciate, unless there is a clause in the contract of guarantee allowing the banker to deal with the securities as he may think fit. Similarly, if the banker holds some securities belonging to the principal debtor, he should not return them wholly or partially to the principal debtor, as thereby he will prejudice the interests of the surety.

Not to give indulgence to the debtor—Another example of an obligation which is imposed upon the banker is to be noticed in the rule which prevents a creditor from giving any indulgence to the debtor, unless the same is provided for in the contract of guarantee or is assented to by the surety. If the banker enters into an agreement whereby he forbears or extends the time of payment, the surety will be discharged from his liability (Indian Contract Act, 1872, s. 135). The principal underlying this rule is, that, if the banker extends the time of repayment, the financial position of the principal debtor may become so bad, that the chances of the recovery of money by the surety, who is liable to the banker, may be minimized or totally lost. There is also the chance of the insanity or death of the principal debtor. However, mere forbearance on the part of the banker to sue the principal debtor or to enforce any other remedy against him does not, in the absence of any provision to the contrary in the guarantee, discharge the surety (Indian Contract Act, 1872, s. 137). There is, however, conflict of judicial opinion on the question, as to whether a surety is or is not discharged, when forbearance to sue on the part of the creditor continues right up to the time that the claim against the principal debtor becomes time-barred. The High Court of Allahabad answers the question in the affirma-

tive (*Saligram* v. *Lachhman* (1928), 50 All. 211); whereas the High Court of Madras, following the High Courts of Bombay and Calcutta, holds the opposite view (*Subramania* v. *Gopala* (1910), 33 Mad. 308). The banker will be well advised to add to the terms of the contract of guarantee a provision allowing him to grant time to the debtor if the former thinks it necessary.

Rights of the Banker against the surety.

RIGHT OF LIEN—The banker can exercise his right of lien on the balance of the account of the guarantor in his possession notwithstanding the fact that his claim under the guarantee is time-barred. However, it should be noted that his right to exercise a general lien does not arise until default has been made by the principal debtor, in which case the banker should immediately inform the guarantor that the former has exercised his lien on the latter's money or securities deposited with him. A banker is not, however, bound to sue the debtor before claiming the amount from the guarantor.

SURETY'S LIABILITY CO-EXTENSIVE WITH THAT OF THE PRINCIPAL DEBTOR—According to section 128 of the Indian Contract Act, 1872 the liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract of guarantee. For instance, if Mr. Ghaznavi has guaranteed the payment of a bill of exchange accepted by Mr. Ali, the former will be liable not only for the amount of the bill but also for any interest and charges that may become due on the same. "I entertain no doubt that a party who guarantees the payment of a bill is liable for all that the principal debtor would be liable for" ((1846) 16 M. & W. 99; Per Pollock C.B. at p. 103).

BANKER'S CLAIM AGAINST A BANKRUPT SURETY'S ESTATE—In the event of the bankruptcy of the surety, the banker is entitled to prove his claim against the estate of the surety. When the banker hears of the death or bankruptcy of the surety he should close the account guaranteed by the surety and if the principal debtor makes a default in the payment of the amount, the banker should at once claim the amount from the legal representative of the deceased or from the Official Receiver of the bankrupt surety.

A POPULAR FALLACY ABOUT GUARANTEES—The proverbial litigation attendant upon the guarantees is perhaps due to the popular belief that the signing of a contract of guarantee is nothing more than a "mere formality." In fact, there was much truth in the pompous Wilkins Micawber's definition of guarantee in Dickens' masterpiece, David Copperfield, when he said in his oratorical manner, "A guarantee is where one man that can't pay gets another man that can't pay to say he will." Rather cynical, but nevertheless true. However, in the face of several religious warnings in the Holy Bible against the risks of suretyship, persons from motives which do credit to their kind nature, do enter into contracts of suretyship without taking thought for the morrow and about the possibility of their being called upon to discharge the liability. They usually forget the son of Sirach's advice "Be not surety above thy power. And if thou be surety take thought as one who will have to pay." It is easy to put one's pen to paper and complacently append one's signature to a contract of guarantee, but to be compelled to put one's hands into one's pockets or loosen the strings of one's purse when the fruit of the friendly act is demanded, is usually an unexpected and painful experience. Even when the eventual liability falls

on him, the surety generally imagines that he will be called upon to pay, only when all means of compelling the debtor to pay have been exhausted. However, a strange disillusionment comes, when the debtor's business suddenly collapses leaving practically no assets. It is as a remedy for the harassments resulting from this popular fallacy, that bankers always insist on getting the contracts signed on their printed guarantee forms with practically no loophole to enable the guarantor to escape liability.

Precautions.

ADVISABILITY OF GETTING THE CONTRACT OF GUARANTEE SIGNED IN THE BANK MANAGER'S PRESENCE—Usually, bankers require the guarantors to execute the guarantee in the bank manager's presence. It is not advisable to allow the customer to take the guarantee form away and himself obtain the signature of the guarantor thereto. This is firstly, because, the guarantor's signature may turn out to be a forgery, or he may later on allege that he signed in ignorance of the nature of the document, and secondly, the guarantor when called upon to discharge his obligation, may put forth the plea that he signed under a misrepresentation made by the man to whom the bank entrusted the document to obtain the guarantor's signature.

NOTICE OF PRINCIPAL DEBTOR'S DEATH—As already explained, the notice of the death of a customer puts an end to his account and consequently the guarantee automatically terminates. The banker should make a formal demand upon the guarantor for repayment of the amount unless it is paid by those in charge of the estate of the deceased.

NOTICE OF DEBTOR'S BANKRUPTCY—A banker should stop the operation on a guaranteed account as soon as he receives notice, actual or constructive, of his debtor's bankruptcy. In such a case the banker should also demand the repayment of the amount due by the surety. The banker need not first resort to the sale of the securities held by him in the account.

NOTICE OF THE LUNACY OF THE DEBTOR OR SURETY—A banker on receipt of reliable notice of the lunacy of the principal debtor or surety should close the account. It was held in *Bradford Old Bank* v. *Sutcliffe* (1918), 2 K. B. 833, that the lunacy of a surety is to be taken as terminating the guarantee so far as future advances are concerned. Consequently, any advance made by the banker after receipt of the notice of the lunacy of his customer is not recoverable from the estate of the lunatic despite the fact that the contract of guarantee may provide for a month's notice from the surety for the termination of the guarantee.

CHANGE IN THE CONSTITUTION OF THE FIRM OR COMPANY—Unless it is provided in the contract of guarantee that changes in the constitution of a firm or company will not affect the guarantee it will terminate in case the bank having the guarantee is amalgamated with or is absorbed by another bank. Banker's guarantees, however, usually provide for such contingencies. The surety is entitled to securities deposited even by third parties whether such securities were deposited before or after the signing of the contract of guarantee provided they were expressly held in respect of the loan, repaid by the surety.

Rights of the Surety.

As the completeness of the guarantee form used by bankers gives them the maximum of freedom and leaves for the guarantors practically no scope

for evading liability when the principal debtor defaults, so people are led to believe that a person who has signed the common form of banker's guarantee has no rights to speak of. Although it is true that bankers' guarantees provide for creditors the maximum freedom of action and leave hardly any rights for the guarantor, a surety, unless he surrenders by express agreement, has by law the following rights :—

Surety can call for the particulars of the extent of his liability—In the first place a surety can, during the continuance of the guarantee, ask the banker for particulars of the extent of his liability and the banker is bound to supply the necessary information, but he should do so with all possible care without committing himself in respect of other details relating to the contract. The surety has, however, no rights to inspect the account of the debtor or obtain from the bank any other information of a confidential nature. It does not, however, mean that the guarantor can expect the banker to withdraw immediately the facilities provided by him to the principal debtor on the basis of the guarantee without giving notice for a specific period, because the customer, who may have entered into business dealings and contracts upon the faith of guarantee, may suffer in his credit. However, if the bank takes advantage of the interval to make new and purely voluntary advances, it would not be acting equitably towards the guarantor. For example, if a father guarantees an overdraft to his son studying at a college and the latter taking an undue advantage of the opportunity begins squandering money on luxurious living, the former can ask the bank to pay no more cheques drawn by the latter. If the bank declines to accede to this request and points to the three months' notice clause in the guarantee signed by the father, the guarantor of the overdraft, it would not be acting equitably towards him.

Right of revocation—As regards the surety's right to revoke or withdraw the guarantee, it may be stated that it will depend upon the nature of consideration. If the consideration for a particular guarantee is to forbear to sue for a debt already owing from the principal debtor the guarantor cannot evade his liability by revoking the contract of guarantee. Even when the liability of the customer for whose benefit the guarantee is given is contingent as may be the case when the banker according to the terms of the contract of suretyship discounts a bill of exchange for the customer or issues a letter of credit in his favour, the guarantor's liability will continue so long as the customer to whom the credit facility is granted remains liable to the banker, though contingently, on the instrument. Even when the loan account of the principal debtor has been debited and his current account credited the banker on receipt of the notice of revocation from the guarantor cannot close the customer's current account and dishonour his cheques drawn against the balance.

Provision for notice of a specified period—In the absence of any stipulations to the contrary regarding notice, a continuing guarantee can be determined at any time as to future transactions. Upon the receipt of notice from the guarantor, who has not bound himself to give notice of the termination of his liability after the expiry of a specified period the banker should communicate it to the customer and close the account so as to prevent the operation of the rule in *Clayton's case* according to which every payment subsequent to the receipt of notice of termination of the guarantee by the banker, unless appropriated otherwise, will go to the reduction of the amount for which the surety is liable. However, he will not be liable for any subse-

quent debit item as the same will be treated as a new advance. It is generally believed that a banker who honours outstanding cheques after the expiry of the period of the notice agreed upon does so at his own risk. Bankers generally avoid this risk by having in their guarantee forms an express provision requiring the guarantors to give notice of a specified period before terminating their liability on the guarantees. In such a case the guarantee will remain in force till the expiry of the period of the notice. As regards the honouring of outstanding cheques and bills accepted on behalf of the customer before receipt of the notice, there seems to be no doubt that the guarantor cannot raise any valid objection. It also appears reasonable that the banker is justified in completing transactions, in the ordinary course of business, begun prior to revocation.

EFFECT OF THE NOTICE OF SURETY'S DEATH—In the absence of an express undertaking to the contrary, notice of the death of the surety revokes a continuing guarantee so far as transactions taking place after the death are concerned. However, as stated above, bankers by having in their guarantees a clause requiring sufficient notice to be given by the guarantor during his lifetime and by his legal representatives after his death, before terminating the guarantees, are able to safeguard their interests. On receipt of the notice of the death of a surety, the banker usually rules off the account and opens a new one to safeguard his interests.

SURETY SUCCEEDS TO ALL RIGHTS AND EQUITIES OF THE CREDITOR—A surety on the payment or performance of all that he is liable for, or which is due to the creditor, succeeds to all the rights and equities of the latter. He "is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not ; and, if the creditor loses or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security" (Indian Contract Act, 1872, section 141). However, in case the guarantee is applicable to the whole of the debt but limits the guarantor's liability to a specified amount, the surety can neither claim a proportionate part of the securities in the hands of the banker nor prove his claim against the debtor's estate for the amount paid by him unless the creditor's claim against the debtor is fully discharged. When the liability to the banker is fully discharged, he is bound to hand over any surplus remaining in his hands to the surety, or if there be more than one to each of the sureties in proportion to the liabilities discharged by each of them. In case the guarantee is applicable only to a part of the debt the surety, on the payment of the amount due, can claim a proportionate share in the securities belonging to the debtor held by the banker, and in case of the insolvency of the principal debtor, the surety can prove his claim against the principal debtor's estate. A banker's guarantee is usually applicable to the whole debt and contains a provision by which the surety expressly declares that he will not compete with the banker in the event of the bankruptcy of the principal debtor or claim any securities the banker may hold, until the whole of the debt due to the banker has been paid.

SURETY'S RIGHT AGAINST DEBTORS AND CO-SURETIES—Generally, before paying the amount demanded by the banker, the surety sends a notice to the principal debtor of his intention to satisfy the banker's demand. The surety on making the payment to the banker can claim the amount rom the principal debtor, but he cannot make any profit out of the

transaction. For instance, if he persuades the creditor to give up either the whole or a part of the interest due, the surety cannot claim from the principal debtor, the amount foregone by the creditor. In case of the bankruptcy of the principal debtor, the surety may prove the debt in respect of his contingent liability even if he has not been called upon to pay any definite amount. In case of a joint guarantee the sureties have certain rights *inter se.* As they share the liabilities, they have also in equity the right to share the means of recoupment. Thus if they are liable in equal amounts they will be entitled to share equally the securities belonging to the principal debtor in the possession of the banker. In case their liabilities are unequal, they will share the securities rateably. If any one of the sureties has to pay more than his share he has a right to call upon his co-sureties for such contributions as will enable him to recoup himself to the extent of the excess amount paid by him over and above his proportionate liability. A co-surety has also the right to the benefit of a counter-security given to another surety by the principal debtor. In *Steel* v. *Dixon* (1881), 17 C.D. 825, it was held that a surety who had obtained from the principal debtor a counter-security for the liability he had undertaken, was bound to bring into hotchpot, for the benefit of his co-sureties, whatever he had received from that source, even though he had consented to be a surety only because of the counter-security, and the co-sureties were, when they entered into the contract of suretyship ignorant of his agreement regarding the same. It may also be stated that the period of limitation as against the debtor runs from the date of the discharge of his liability by the surety to the creditor.

Surety's right to be discharged—A surety is entitled to a complete discharge in the following cases:—

(*a*) *If the creditor discharges the principal debtor* or acts in a manner the legal consequence of which is to discharge the principal debtor (Indian Contract Act, 1872, (IX of 1872), section 134). The principle underlying this rule is that if the principal debtor is discharged by the banker, the surety making the payment to him will not be able to claim the amount from the principal debtor. It may also be said that as the debt due from the customer is extinguished by his discharge and as the principal contract becomes cancelled, the contract of guarantee also *ipso facto* ceases to exist.

(*b*) *If the creditor without the consent of the surety, makes a composition with, or promises to give time to, or not to sue the debtor* (Indian Contract Act, 1872, section 135). The effect of giving time to the debtor has already been discussed above. When a creditor accepts a smaller amount than the amount due from the principal debtor in full payment of the debt due, he cannot be allowed to claim from the guarantor, the difference between the amount due and the amount received from the debtor. Similarly, when a banker without the consent of the surety, undertakes not to sue the principal debtor, his forbearance releases the surety.

(*c*) *If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do and thereby the eventual remedy of the surety against the principal debtor is impaired* (Indian Contract Act, 1872 (IX of 1872), section 139). For instance, *A* enters into a contract to build a house for *C* for a certain

sum to be paid by instalments as the work reaches certain stages. *B* becomes guarantor for *A*'s due performance of the contract. *C* without the knowledge of *B* prepays the last three instalments. *B* is thus discharged from his liability.

PROVISION FOR CERTAIN OTHER CONTINGENCIES—Before we conclude the chapter it is desirable to state that in addition to the points explained above regarding which the contract of guarantee should be very clear it is necessary that provision for contingencies, such as the absorption or amalgamation of the lending banker with another bank, should be expressly made in banker's guarantees. Similarly, where the account or loan guaranteed is that of a partnership the guarantee should have a provision to the effect that any change in the firm will not affect the guarantee. It must also be remembered that any alteration made in a joint or a joint and several guarantee must have the consent of all the co-sureties.

CHAPTER XI

ADVANCES SECURED BY COLLATERAL SECURITIES

SECURED LOANS—We have, so far, dealt with the banker's advances, which are made either on the mere personal security of a borrower, or on his personal security, coupled with that of one or more other persons. We have seen that, in the case of loans secured by guarantees, the guarantor usually does not pledge any tangible security, but merely promises to pay the amount due from the principal debtor, if the latter fails to do so. The same is true of clean bills, where the acceptor of a bill is the principal debtor, and the drawer and the indorsers are more or less in the position of sureties. Although bankers do not mind investing considerable sums of money in the discounting of genuine commercial bills, they are very reluctant to make unsecured loans, and generally insist upon some collateral security to back them. We shall now consider, therefore, the banker's position as far as these secured loans are concerned.

DIFFERENT TYPES OF SECURITIES IN DIFFERENT PLACES—In the course of business as lenders, modern bankers come across different types of securities according to the locality in which they carry on their business. For example, in large cities like Bombay, Calcutta and Madras which have many rich and upper middle class people the banker is called upon to make advances against gilt-edged and other stock-exchange securities. In large industrial and manufacturing places the mills and factories require accommodation against stocks of raw materials and finished goods. In the agricultural centres it is the agricultural produce which occupies the principal place among securities offered to bankers.

DIFFERENT KINDS OF COLLATERAL SECURITIES—Bankers usually secure their advances by stock exchange securities, bullion, goods, documents of title to goods and immovable property. Sometimes, miscellaneous securities as for example, life policies, ships, and accounts receivable are accepted as securities for banker's advances. The large variety in the security offered should be regarded as a source of strength to the banker who can minimize his risks by spreading his advances over this wide field. Before considering the banker's point of view of these securities, it is necessary to make some general observations.

Modes of Securing Advances.

Willes J. in *Halliday* v. *Holgate* said " There are three kinds of security; the first is a simple lien; the second a mortgage passing the property out and out; the third a security intermediate between a lien and a mortgage, *viz.*, a pledge where, by a contract, a deposit of goods is made as security for a debt and the right to the property vests in the pledgee so far as is necessary to secure debt."

BANKER'S LIEN—We have already explained the import of the banker's lien; it is sufficient to recapitulate here, that it is purely possessory and does not transfer the property or the right of ownership to the banker. By usage and statute, however, a banker's lien is tantamount to an implied pledge conferring upon him the power of sale in certain events. The exercise of the lien, however, is made subject to several qualifications, but whenever it can be validly exercised, the lien stands on the same footing as a pledge.

PLEDGE—By section 172 of the Indian Contract Act, 1872, a pledge is defined as a bailment of goods as security for payment of a debt or performance of a promise. The ownership remains with the pledger, subject only to the qualified property which passes to the pledgee by virtue of the bailment to him.

Possession necessary. Delivery is necessary in order to complete a pledge. It may be symbolical, as for instance when the key of a godown where the goods are kept is delivered, or documents of title relating to the goods are delivered. Further there may be delivery even when "there is no physical change in the possession of the goods. In point of law, possession of goods may be changed by agreement without any physical change in their position or in the position of the person who actually holds them. The right of possession may be transferred by agreement, and the character in which the custodian holds them may be changed by attornment," per Lindley L. J. in *Mills* v. *Charlesworth* (1890), 25 Q.B.D. 421. On the same reasoning, there may be delivery to the pledgee even though the goods continue in the possession of the pledger if he agrees to hold them as bailee on behalf of the pledgee and subject to the pledgee's order (*Reeves* v. *Capper*, 5 Bing. N.C. 136).

Redelivery to the pledger. If once the goods are delivered to the pledgee, the pledge is not lost if they are redelivered to the pledger for a limited or special purpose. For instance, if a trader pledges a railway receipt with a banker to secure a loan, and the banker hands over the railway receipt to the trader for the special purpose of clearing the goods and storing them in the banker's godown, such redelivery will not prejudice or affect the pledge (*Mercantile Bank of India* v. *Central Bank of India Ltd.*, 65 I.A. 75). Similarly, if a pledgee in possession, entrusts the goods to the pledger for the special purpose of selling them on behalf of the pledgee, the pledge is not lost (*North Western Bank Ltd.* v. *Poynter*, [1895] A.C. 56). This House of Lords' decision has neither been cited nor considered in the series of judgments of the Calcutta High Court on the question of trust receipts; see *post* page.

Right to sell. Section 175 of Indian Contract Act provides that if the pledger makes a default in the payment of the debt by the stipulated time, the pledgee has two alternative remedies open to him: he may either file a suit for the debt and retain the property pledged as security or he may, after reasonable notice, sell the property. If there is a deficit the pledger is bound to make it good to the pledgee and if there is a surplus the pledgee must account for the same to the pledger.

Who can create a pledge? Under the original section 78 of the Indian Contract Act, 1872 any person in possession of goods or of documents of title to goods could create a valid pledge, the only limitations being that the pledgee must act in good faith and without notice and the pledger must not have obtained possession of the goods by means of fraud or an offence. This section was so exceedingly wide that it has now been repealed by Act IV of 1930 and two new sections 178 and 178A have been substituted. According to the new section 178, a mercantile agent who is in possession of the goods or of the documents of title relating to the goods, with the consent of the owner, can create a valid pledge. By section 178A, a pledger who has obtained possession of the goods under a contract voidable for fraud or misrepresentation, which contract has not been rescinded at the time of the pledge, can also create a valid pledge. Similarly, by section 30 (*a*) of the

Indian Sale of Goods Act, 1930 (III of 1930), a seller, who continues in possession with the consent of the buyer, can pass a valid title in favour of the pledgee and by section 30 (*b*) a buyer with the consent of the seller, has obtained possession of the goods or of the documents of title to the goods may create a pledge free from all equities available to the original seller.

Mortgage of movables. A mortgage of movables may be defined as a transfer, by way of security of the general ownership of the chattel, subject to the equity of the redemption of the mortgagor. No delivery of possession is necessary to complete a mortgage in English law.

Whether a transfer amounts to a mortgage will depend on the language of the document creating the same. In conveyancing, the formula is as follows: "The mortgagor hereby conveys, transfers and assigns unto the mortgagee his right, title and interest in the property to have and to hold the same to the use of the mortgagee subject to the proviso for redemption hereinafter contained."

Bills of Sale Acts. In England, mortgages of movables are regulated by the Bills of Sale Acts, which require registration in order to render such mortgages valid. If the formalities attendant on the transaction are complied with, the right created in favour of the mortgagee is *in rem*, *i.e.*, available against the whole world and not liable to be defeated either by the insolvency of the mortgagor or by any disposition or dealing with the chattels inconsistent with the mortgagee's rights. It is important to note that under a Bill of Sale the property is intended to remain and normally remains in the possession of the mortgagor.

Mortgages of movables in India. The law of mortgages of movables in British India is in a most unsatisfactory and chaotic condition. Before the Indian Sale of Goods Act (III of 1930) there were several cases in India in which it was decided that a mortgagor, who remains in possession of the goods, can pass a title to a *bona fide* purchaser for value, or to a pledgee who takes possession of the goods free from the first mortgage (*Backer* v. *Ahmed Esmail*, I.L.R. 5 Rang. 633; *Narsiah* v. *Venkataramiah*, I.L.R. 42 Mad. 59). These judgments proceeded upon the old section 108 of the Indian Contract Act which provided that where a person was by consent of the owner, in possession of the goods, any disposition of the goods, whether by sale or pledge, made by him to a *bona fide* transferee for value was binding on the owner. As under a mortgage, the whole property passes to the mortgagee, in law, he is the owner and if the mortgagor, who has a bare equity of redemption, remains in possession with the consent of the mortgagee, the case is clearly one which would fall within the provisions of section 108 and the first mortgagee's rights would naturally be lost.

Repeal of s. 108 of the Indian Contract Act—Section 108 of the Indian Contract Act, 1872 has now been repealed and at present there is no provision either in the Indian Contract Act or the Indian Sale of Goods Act, 1930 which governs these matters. On the other hand, section 66 (3) of the Indian Sale of Goods Act, *supra*, expressly states that the provisions of the Act relating to contracts of sale do not apply to any transaction in the form of a contract of sale which is intended to operate by way of mortgage, pledge, charge or other security. In the absence of any statutory provision, the accepted principle in British Indian courts has been to follow the English common law. In England, possession is not necessary to complete the title of a mortgagee of chattels (*In Re Middleton*, L.R. 11 Eq. 209)

A mortgaged his chattels to B under a bill of sale, which was registered. A created a second mortgage in favour of C under a second bill of sale which was also registered. C took possession of the goods and it was contended on his behalf that C had priority because English law, as far as chattels were concerned, required delivery of possession to complete the title. It was held that there was no such principle known to English law, and A's mortgage had therefore priority over C's mortgage. In the case of *Co-operative Hindustan Bank Ltd.* v. *Surendranath De*, I.L.R. 59 Cal. 667, the Calcutta High Court, however, held that apart from the old section 108 of the Indian Contract Act, 1872 the analogy of mortgages of movables according to the common law of England cannot be applied to India. It may justifiably be asked why it has no application in this particular case, when the English law has been universally followed, in the absence of any statutory provision, in practically all the branches of law as administered in British India. This view was followed by the same High Court in *Manmohan Mukherjee* v. *Keshrichand Gulabchand*, I.L.R. 62 Cal. 1046, in which the following propositions were laid down: Firstly, there is no such thing as a pledge of movables without possession. Secondly, a transaction regarding movable property, which cannot operate as a pledge on account of non-delivery of possession of the same to the pledgee, does not appear as an effective mortgage of the same, whether the language of the document embodying the transaction be of intended pledge or be couched in the usual phraseology of a mortgage, or that of a hypothecation. A mortgage of movables without possession is deferred to the subsequent pledge of the same; also to subsequent *bona fide* purchasers for value, and to the official assignee by virtue of the doctrine of "reputed ownership." The same principle applies to holders of trust receipts.

EQUITABLE MORTGAGES AND CHARGES—The three kinds of security already dealt with, namely, the lien, mortgage and pledge were the only ones recognized by the English common law. Equity, however, with its *in personam* jurisdiction, gave effect to various forms of security which were either invalid or unknown to the common law. It is not possible to clarify the subject without a detailed consideration of the intricate doctrines of the courts of Chancery in England, which would be out of place in a book dealing with banking law. A short summary of the position, therefore, can only be attempted.

Instances of equitable charges. A trustee is deemed to be the legal owner of trust property and the beneficiary or *cestui que trust* is considered the equitable owner. If a beneficiary creates a mortgage of his interest, the mortgagee would not get the legal title but only an equitable title and his mortgage would be an equitable mortgage. Similarly, a registered holder of shares of a limited company who sells them continues to be the legal owner until the purchaser's name is brought on the register of the company. The purchaser, though he may have the share certificates with the blank transfer forms signed by the vendor in his possession, will be only an equitable owner until the shares are transferred to his name. Any mortgage, made by the purchaser of the shares before registration, will therefore be an equitable mortgage as his own title is not legal but equitable.

Ineffectual transfer. The mortgagor, though he is the legal owner, may use a form of conveyance ineffectual to transfer the legal estate or the parties may deliberately agree to a charge effectual in equity only. For instance, if a policy of life insurance is intended to be assigned by way of security, the law requires a regular assignment in writing signed by the mortgagor. A bare deposit of the policy would be invalid and ineffectual

in law but may constitute an equitable mortgage on the policy (*Ferris* v. *Mullins* (1854), 2 Sm. & G. 378). Similarly, if a share certificate without any signed transfer is deposited as a security for a loan, there would be an equitable mortgage of the shares constituted by such deposit (*Harrold* v. *Plenty* (1901), 2 Ch. 314). On the same principle, a mortgage of immovable property in England could only be effected by a regular conveyance. A bare deposit of title deeds, with the intent to create a security on the property comprised therein, will therefore amount to an equitable mortgage of the property. Equitable mortgages have received statutory recognition in British India.

Hypothecation. In law, to create a mortgage of movables, appropriate words of transfer and conveyance are necessary and for a pledge, possession is essential. A transaction intended to be a security over chattels, in which there are no words of transfer and where the possession remains with the borrower, will therefore amount to an equitable charge which is generally known as an hypothecation. Singularly enough, according to the Calcutta decisions, a mortgage of movables in India stands on the same footing as an hypothecation under English law.

Agreements to mortgage. In equity, an agreement to mortgage or give a charge, if it is one capable of specific performance, will create from the execution of the agreement, an equitable charge over the property intended to be mortgaged or charged. This is based on the maxim that "Equity considers that as done which ought to be done." Similarly, there can be no mortgage either in law or equity of property which is not in existence. Equity, however, will consider a mortgage of future property as an agreement to mortgage such property and the charge will settle on it as soon as such property comes into existence (*Holroyd* v. *Marshall* (1862), 10 H.L.C. 191 and *Tailby* v. *Official Receiver* (1888), 13 App. Cas. 523).

Priority of equitable mortgages. Priority of equitable charges is determined by two maxims of equity. *viz.*, (*a*) As between equity and law the law prevails; (*b*) where equities are equal, the first in time prevails. On the first maxim is based the doctrine of the *bona fide* purchaser for value without notice. The maxim means that an equitable title will be defeated by a subsequent legal title, provided the person who obtains the legal title has paid value, has acted in good faith and has no notice of the prior equitable title. The equities being equal, the legal title will prevail. Illustrations can be multiplied indefinitely but two will serve the purpose. A beneficiary is the equitable owner of trust property but if a trustee sells the same to a *bona fide* Purchaser for value without notice, the beneficiary's prior equitable title will not prevail against the subsequent legal title. Similarly, an equitable mortgage of immovable property will be postponed in England to a subsequent legal mortgage of the property. If a person, however, takes a legal mortgage without the production of the title deeds, he cannot be said to be acting either in good faith or without notice of the prior equitable mortgage because the absence of the title deeds must, in the ordinary course, put him on inquiry. The equities in such a case not being equal, the maxim will not apply and the legal title will not prevail. The second maxim applies where there is no legal title, both titles being equitable. In such a case priority is determined in the order of time. We have already seen that with regard to shares in limited companies the registered holder is the legal owner, all persons claiming through or under him have only an equitable title before registration. The following illustration will, it is hoped, make the position quite clear. *A* is the registered holder of certain shares which he holds in trust

for *B*; *B*'s title is therefore purely equitable. *A* deposits the share certificates with signed blank transfer forms with a banker to secure the repayment of a loan. The banker does not have the shares registered in his name. In such a case the banker's title is also equitable. *B*'s title will therefore prevail, being first in time. If *B* has connived at the breach of trust on the part of *A*, then the equities will not be equal, the maxim will not apply and the banker's equitable title will prevail.

MARGIN EXPLAINED—As the prices of all kinds of securities are liable to fluctuations, and vary according to their nature and as the amount of the money owing to the banker is likely to be increased by the accrual of interest and other charges payable by the borrower, it is evident that no banker should advance an amount equal to the full market value of the securities offered. Even if they are among the "wall flowers" of the market, which generally sit out and seldom take part in the dance in the middle of the market floor, the bankers accepting them, will sometimes find it to their cost, that the official quotations of such securities are much higher than the prices at which they can be actually sold. It is, therefore, necessary that the lending banker should insist upon getting securities worth more than the amount of the loan or overdraft he is called upon to grant. This difference, between the market value of the securities and the amount lent against them, is known as the *Margin*.

MARGIN FOR PRECIOUS METALS AND GILT-EDGED SECURITIES—The margin depends upon the class to which the securities offered belong, as also to a certain extent, upon the credit of the customer. For instance, in the case of an advance against gold bullion, in a gold-standard country, a banker in normal times may be satisfied with a margin of five per cent. as the price of gold in gold standard countries is ordinarily very steady. However, when the monetary standard of a country is not gold and the price of gold fluctuates a great deal, as it is happening at present a larger margin than five per cent. should be insisted upon. Similarly, as the price of silver is liable to greater fluctuations than that of gold, a banker may have to demand a margin of 10 to 15 per cent. or even more while making loans against silver or silver ornaments. In a silver standard country, the position is perhaps just the reverse of that stated above, and, therefore, a banker in that country will be satisfied with a smaller margin in the case of silver than that in the case of gold. In normal times, in the case of gilt-edged securities, a margin of 10 per cent. is generally considered ample, as they fluctuate within very narrow limits. Shares of feeder railway companies, which are considered a good security, call for a margin of 20 to 25 per cent. Similarly, for the shares of the Reserve Bank of India and of the Imperial Bank of India, a margin of 15 and 20 per cent. respectively, is generally believed to be adequate.

FOR INDUSTRIAL SECURITIES—In the case of shares and stocks of industrial concerns, the position varies a great deal. There are industrial concerns whose securities, by reason of their financial position and reputation, command almost as good a credit as any government security; and there are others, whose securities may be worse than worthless. The debenture stocks of good industrial concerns rank much higher than their shares as security for advances. Similarly, their preference shares are considered better than their ordinary shares. The margin, in such cases, depends upon the position of the company. The shares of a mining company which has not paid any

dividend for several years, may not be a good security, even if a margin of 50 per cent. is offered.

FOR GOODS—In the case of goods and documents of title to goods, the margin varies more or less according to the extent to which their prices are liable to fluctuations. For instance, if the goods offered as security are staple commodities such as cotton, wheat, or sugar, the prices of which are generally steady, the banker may consider a margin of 25 per cent. as ample. Here, again, it may be noted, that there can be no fixed margin even for such commodities. A great deal depends upon the conditions of the market for the particular goods offered. If the goods are of a perishable nature, the banker may accept them, provided they are readily saleable and the advances against them are for very short periods. If the goods offered are articles of luxury, the prices of which are liable to variations on account of changes in fashion, etc., the banker should be very reluctant to accept them, even if a margin of 40 to 60 per cent. is offered.

Liquidity of Securities.

As a commercial bank borrows funds which are repayable on demand, or at short notice, it cannot afford to lock them up for long periods. It is, therefore, necessary that when a customer applies for a loan against some collateral securities, the banker should consider whether he will be in a position to realise them without difficulty in case of default on the part of the borrower.

Need for written Agreements.

Although the law does not require the agreement of pledge or mortgage of movable property, such as stock exchange securities, goods, etc., to be in writing as a mere deposit of securities or goods with the intention to create a charge on them is considered quite sufficient to constitute an agreement in law, it is, however, customary with all banks to get such agreements reduced to writing and signed by their customers; see Appendix A, Form Nos. 26, 26 (*a*) and 28, *post*. This practice has the following advantages:

ADVANTAGES OF WRITTEN AGREEMENTS.—*Firstly*, if the terms of an agreement are committed to writing, it will minimize the chances of a misunderstanding of the terms between the banker and his customer, as the agreement will state clearly the liabilities which are to be covered by the security offered. *Secondly*, the banker's memorandum of deposit contains useful provisions in his favour. For instance, the mere deposit of stock exchange securities as a cover for advance will create only an equitable charge on them. It should, however, be remembered, that the banker does not thereby get the power to sell those securities, unless such power is given by an agreement. *Thirdly*, an agreement usually provides for an undertaking, on the part of the borrower, to maintain the margin agreed upon, failing which, it authorizes the banker to realize the securities. *Fourthly*, an agreement also provides that the securities or goods charged will be deemed to be a security for the payment by the customer of the balance due ultimately on the closing of his account or accounts with the banker. This will prevent the application of the rule in *Clayton's case*, which otherwise might prejudice the rights of the banker. *Lastly*, an agreement invariably contains a declaration by the customer, that he has a good title to the particular securities deposited, and can, therefore, charge them. If the securities offered do not belong to the

borrower, such a statement will incriminate him and thus he will be deterred from declaring himself as their lawful owner, if he has no title to such securities.

Realization of Securities.

RIGHT TO SELL—We have already stated that, generally, a mere lien gives no right of sale in respect of the securities and the only way of realizing them is to file a suit against the customer, and then have the securities attached and sold in execution of the decree. However, where the rules of the stock exchange attach a power of sale to the lien, such a power can be exercised. The pledgee of securities, on the other hand, has, in any case, the power to sell them on default of the pledger (*In re Morrito* (1886), 18 Q.B.D. 222). As Lords Justices Cotton, Lindley and Bowen observed, "a contract of pledge carries with it the implication that the security may be made available to satisfy the obligation, and enables the pledgee in possession (though he has not the general property in the thing pledged, but a special property only) to sell on default in payment and after notice to the pledger, although the pledger may redeem at any moment up to sale."

DEFAULT AND NOTICE—When a debt payable on a fixed date, remains unpaid on that date, the debtor is said to have defaulted. However, from the extract given above, and in view of the express terms of section 176 of the Indian Contract Act, 1872 it is apparent that in British India, ordinarily, notice to the pledger of the pledgee's intention to sell the securities, if the amount due remains unpaid by the stipulated time, is necessary before sale. Where no date is fixed for the repayment of the loan, a notice (see Appendix A, Form No. 34, *post*), demanding payment within a reasonable time and informing the pledger that, in case of his failure to repay within that time the securities pledged will be disposed of, is sufficient. The reasonable time in such cases is to be determined according to the circumstances of each case. If the prices of the securities pledged are falling rapidly and the customer fails to maintain the promised margin, a short notice will be regarded as quite adequate. On the other hand, if the security to be sold is real property, generally a longer notice is required. It must be clearly understood that if the form of the charge requires that there must be a demand for repayment prior to the exercise of the right of sale, then demand must be made even if there has been an earlier demand which was subsequently waived (*Hunter* v. *Hunter and others*, H.O.L. (1936)). However, in actual practice, as bankers reserve for themselves very wide powers, no great difficulty arises in this connection.

Law of Limitation and Advances.

The period of limitation within which a suit for recovery of an advance lies, is the ordinary period of three years from the date on which the advance is made. In cases, in which the advance is made for a fixed period, however, the limitation period of three years begins from the date of expiry of the fixed period. Where an advance is made on a promissory note payable on demand, the period of limitation runs from the date of the execution of promissory note and not from the date of demand.

Advances against Stock Exchange Securities.

WHAT COMPROMISES IN THE TERM ?—Having explained the important general principles governing secured advances, we shall, first of all, consider

those which are secured by stock exchange securities. This term, in its strict sense, is used for gilt-edged securities, Government securities, municipal bonds, port trust and improvement trust bonds and such other securities as are issued by Government and public bodies, and shares and debentures of industrial and commercial companies, banks and insurance companies, and in which dealings take place on the stock exchanges.

IMPORTANCE OF STOCK EXCHANGE SECURITIES—Advances against these securities form an important part of the loans made by commercial banks in large cities, which have stock exchanges, not only on account of the finance required by speculators for the purchase of such securities as are likely to appreciate, but also because these securities are held in large blocks by rich and upper middle classes in such cities, owing to the fact that moneys invested in them can be easily realized in case of need. Moreover, from the point of view of the bankers also, they compare favourably with certain other securities.

POINTS IN FAVOUR OF STOCK EXCHANGE SECURITIES—In the first place, as compared with guarantees, stock exchange securities are, generally, more reliable, because a banker advancing moneys against them, gets something tangible, while, in the case of guarantees, he has to rely entirely upon the solvency of the surety for the recovery of the advances, when the borrower makes default. *Secondly*, high class stock exchange securities which are known as gilt-edged securities, are more easily realizable than those of certain other kinds, *viz.*, lands, buildings, and certain kinds of goods, because there is always a ready market for good stock exchange securities, even in fairly large blocks. *Thirdly*, in normal times, good stock exchange securities, are less liable to fluctuations than commodities such as cotton, sugar, etc. Ordinarily, the prices of first class stock exchange securities are very steady, and, therefore, bankers do not think it necessary to ask for a margin of more than 10 to 15 per cent. *Fourthly*, in the case of stock exchange securities, it is easier for the banker to satisfy himself about the title of the customer offering the securities and their market value, than in the case of securities such as lands, buildings ,etc. The banker need not consult his solicitor to satisfy himself, whether, or not, the title of his customer to the stock exchange securities offered is good. When the securities, are fully negotiable, the banker, in the absence of any knowledge as to the defect in the title of his customer, can acquire a good title to them, if he is holder for value. Similarly, when the securities comprise of shares, the transfer of which must be registered in the books of the issuing company, there is hardly any difficulty in finding out whether or not the customer's title to them is good. *Fifthly*, their market price can be ascertained from the quotations given in the daily papers and those supplied by stock and share brokers. Although quotations given in the newspapers are not always reliable, yet they can certainly give a fair idea about the prices of stocks and shares, particularly those in which frequent transactions take place. *Sixthly*, they can be more easily transferred than certain other partially negotiable securities, or lands, and buildings. For instance, if the securities are fully negotiable, they can be transferred either by mere delivery, or by delivery coupled with indorsement. *Seventhly*, the release of the securities can be effected with a minimum of expense and formality. Lastly, the banker, in case of need, can, without any difficulty, raise money against such securities by pledging them with another banker.

DRAWBACKS OF MAKING ADVANCES AGAINST STOCK EXCHANGE SECURITIES—As against the abovementioned advantages in favour of advances

against stock exchange securities, certain drawbacks may be mentioned. *Firstly*, in case of partly paid-up shares as already pointed out, the banker may be called upon to pay the uncalled amount, if he, or his nominee, is registered as their owner. *Secondly*, the banker renders himself liable as transferee to indemnify the company against any loss it may suffer, if the transferor's signature on the instrument of transfer turns out to be a forged one. In accordance with the decision in *The Corporation of Sheffield* v. *Barclay*, 1905, a transferee, who sends a forged transfer for registration, must indemnify the company which has acted on the faith that the same was genuine, and this liability continues, even though the transferee may have subsequently sold the shares. A banker can avoid this risk by making his customer sign the transfer form in his (banker's) presence. (The risk may be avoided to some extent, if all transfers of shares taken by the banker as security are signed and witnessed in his presence.) *Thirdly*, the articles of association of a company generally provide that the shares will be subject to its lien in case of default in the payment of calls on them, or of any other amount due to it; and so the banker may, if he fails to give proper notice of his lien on the securities to the company concerned, find that he cannot get their full benefit. *Fourthly*, in case of shares which are liable to wide fluctuations, the banker may suffer a loss, if he does not see that his customer maintains the margin agreed upon and in case of default to do so to realize them. *Fifthly*, if the securities are not negotiable, then their transferor cannot give to his transferee a better title than his own.

ADVANCES TO STOCK-BROKERS IN LONDON—It is not uncommon with the bankers in London to advance loans to stock-brokers, which are generally made "from account to account." These advances have an advantage over the loans to other customers against stock exchange securities, in that such loans are of short duration and the securities offered are readily saleable. The banker need not renew the loan, if he is not agreeable. All that he has to do is to give a couple of days' notice before the fortnightly stock exchange settlement and he gets his money back. The need for such advances arises when the broker's client has bought certain shares in anticipation of a rise in their price which does not come off, and when he neither wants to cut off the transaction by selling the shares, nor is able to pay for them. The stock broker places them with a bank, which lends 70 to 80 per cent. of their market price and his customer (the purchaser of the shares) is required to find the balance However, the advances to ordinary customers against stock exchange securities, are a little less liquid, because there is no understanding about their being repayable at a short notice.

Advances to stock-brokers in India.

In large cities, that is, where stock exchanges exist, bankers in India make similar advances to share-brokers generally for a period of one month or less intervening between two successive settlements. Sometimes, this business is done in the form of *budli* transactions which literally mean "carrying over" or transfer from one settlement to another. When the buyer is unable to finance his purchases out of his own resources, resort has to be made to the banker who advances the money and takes delivery at the time of the settlement of the shares purchased by the share-broker on behalf of the client. At the same time the real purchaser of the shares undertakes to purchase them for the next succeeding settlement or delivery about a month later, at a higher price than that at which the banker is asked to take delivery of the said shares. The

difference between the purchase price and the sale price represents the interest on the money invested in the transaction. When the prices of shares are rising rapidly due to heavy speculation, the *budli* rates yield from 6 to 12 per cent. interest. On the other hand, when the market is depressed, the *budli* rates also go down so low, sometimes, as to yield about only 3 per cent. Banks ordinarily enter into such transactions with highly respectable parties and only in gilt-edged securities and first-class shares, as in addition to the risk of the party's inability to pay for the shares at the time of the next settlement as a result of a heavy fall in prices, there is the danger of defective title of the party delivering the shares. It is also the practice of bankers to make straight loans against the deposit of shares to share-brokers and other customers. The practice of bankers in Bombay appears to be to demand heavy margins, extending up to 50 per cent. against loans on speculative shares and securities.

PRECAUTIONS TO BE TAKEN—When the banker is offered stock exchange securities as a cover for an advance, he has to see to which class they belong. As explained in Chapter VIII, the securities against which bankers usually make advances, are public debts, debentures and bonds of municipalities, port and improvement trusts, and shares of guaranteed railways, all of which are considered quite safe. Securities of public utility companies such as tramways, electric, gas and telephone companies as well as shares of banks, are also generally considered suitable for the purpose of securing a banker's advance. While lending against the shares of companies, the banker should, in his own interest, ascertain whether such shares are partly or fully paid-up ones. In the former case, he should make sure that no call has been made which the shareholder has failed to meet, because, such unpaid calls constitute a speciality debt due from the shareholder to the company (s. 21 (2) Indian Companies Act, 1913), which can, "without requiring the certificates to be returned to it, exercise its right of forfeiting the shares in respect of which the calls, though made, have not been paid." Moreover, in case partly paid-up shares are transferred to the banker or his nominee in the books of the company he makes himself liable to pay any calls, the company or its liquidator may make. This liability does not necessarily terminate with the sale or transfer of the shares as in the event of the liquidation of a company, if its existing members cannot meet the calls, anyone who has been its member within a year of the commencement of the liquidation, can be called upon to meet the liability, provided, the amount is required to pay a debt owing by the company at the time he was a member. When the banker is only an equitable mortgagee, he will have to find money for the payment of the calls made on the shares to prevent their forfeiture. If the banker is unwilling to meet these subsequent calls, the only alternative left to him is to sell them out, possibly at a low price. If, however, the banker is quite confident that there is no likelihood of any further calls being made, he need not reject shares merely on the ground of an uncalled liability.

OTHER STOCK-EXCHANGE SECURITIES -With the growth of industries and trades the number of joint-stock companies is increasing day by day. Such an extension of the principle of company promotion, though welcome, is accompanied by the danger of the creation of mushroom companies which do not last long. It is, therefore, necessary for the banker like the investor to be careful in selecting securities which he should accept as cover for his advances. With a view to eliminate undesirable securities being accepted as covers for all its advances and to save time, every modern bank prepares an

approved list of securities for this purpose. The examination of the balance sheets of the companies and surveys of their general working are absolutely essential for the preparation of the list. The nature of the business each company is carrying on or the study of its past history and an estimate of its prospects have an important bearing upon the value of the security of a company. A banker has also to consider whether the security offered are debentures or shares. In the former case he will by taking the security, put himself in the shoes of a creditor of the company. In the latter case he has to consider whether the shares are ordinary or preference, with or without cumulative rights. Ordinarily he will give preference to debentures over shares and to preference shares over ordinary ones. Cumulative preference shares are better than non-cumulative preference shares as in the case of the former class the dividend, if unpaid, accumulates for any year. Similarly, the holders of preference shares have generally a prior claim to the return of their capital before anything is paid to holders of other classes of shares in case of the winding up of a company. The banker should also see whether the shares to be included in the approved list are listed by one or more of the stock exchanges and are freely dealt with, otherwise it will be difficult to realize them in case of need.

VALUATION OF SECURITIES—When a banker is satisfied with the securities offered, he has to ascertain their market price, allowing for any dividend that may be included in the price quoted. Generally, the stock exchange quotations are cum dividend, as long as the dividend warrants are not issued. When the company, whose shares are offered, has closed its books for the preparation of dividend warrants, the dividend declared, but not paid, will be paid to the person whose name is registered in the books of the company as the holder of the shares, and, therefore the banker, for the purpose of valuation, may have to deduct from their market price, the amount of the dividend. A banker should not always rely upon the quotations given in the daily or weekly papers, particularly in the case of securities which do not appear in the "business done" column of the stock exchange quotation list. In such a case, it is better to ascertain from the secretary of the company the rate at which the last transfer of its shares was registered. The banker should also note the date of the transfer and take into consideration the effect of any circumstances, arising subsequently, which are likely to influence the prices of the securities.

HOW TO CHARGE THE SECURITIES—After a banker has approved of the securities offered, ascertained their prices and determined the necessary margin, he has to consider how best he should complete the security. In the case of fully negotiable securities, the property in them, can be transferred by mere delivery, when they are bearer securities. But in the case of securities payable to a certain person or his order, delivery, coupled with indorsement of the person, is essential for transfer of property in them. If the banker takes such securities in good faith and for value, he gets a good title to them, even if it later transpires that the person who pledged them, had no authority to do so. As bankers generally act in good faith and exercise reasonable precautions before accepting such securities, no difficulty need arise on that score, particularly as business done in good faith, even though it be done negligently, does not affect adversely the title of the banker, unless the negligence, when considered with the circumstances of the case is proved to be gross (*Eckstien v. Midland Bank Ltd.*, The Banker, June, 1926). This does not, however, mean that the banker's title would not be affected, when circumstances connected with the transaction are such as should have aroused his

suspicions that the securities deposited did not belong to the person depositing them. It appears necessary, at this stage, to state briefly what is meant by negotiability and what securities can be regarded to possess this characteristic.

NEGOTIABILITY OF SECURITIES—By section 13 (1) of the Negotiable Instruments Act, 1881, a promissory note, bill of exchange or cheque payable either to order or bearer, when transferred either by indorsement and delivery or by mere delivery, according to the nature of the instrument, passes, to its transferee a good title irrespective of any defect in the title of the transferor; the transferee is free from the equities which could be enforced against the original holder, provided, of course he is a holder in due course. This section does not refer to instruments other than promissory notes, bills of exchange and cheques. Consequently, in the case of other instruments which may be impressed with the character of negotiability, it becomes necessary that the transferee should be a *bona fide* holder for value, without notice of any defect attaching to the instrument or to the title of the transferor. For instance, if a bearer cheque is taken for value from a person who had received it from the thief the party taking it, in good faith and for value will get a good title to it. Its drawer can be sued on it and no equities, if any, which could be enforced against the person who obtained the cheque from the thief, or the person who got it from the drawer by fraud, can be enforced against its holder in due course. The transferee of a debt, on the other hand, cannot get a better title than that of its transferor and the debtor can enforce against the transferee the equities which he could put forth against the transferor, his original creditor. In the case of a negotiable instrument, however, not only does the property in it pass by mere delivery or indorsement and delivery, but the holder in due course is no way affected by any defect of title of his transferor or of any prior party. The holder in due course can, moreover, sue upon it in his own name.

Forms of Negotiability.

NEGOTIABILITY BY STATUTE—Negotiability may be expressly given to certain instruments by statute law, as is the case with bills of exchange, cheques and promissory notes, including currency notes. Usage is the origin of the whole of the law merchant, governing negotiable securities, and the statutory negotiability of these instruments is, therefore, the result of the legal recognition of certain mercantile customs.

NEGOTIABILITY BY CUSTOM—Some documents, though not possessing statutory negotiability, may be treated as negotiable by the custom prevalent amongst merchants. It is, however, necessary that this custom must be of the country, where the transaction under dispute was made, as a custom of the country of issue or origin of the instrument will not suffice (*Picker* v. *London and County Bank* (1887), 18 Q.B.D. 515). In this case, the point at issue turned on the rights of a true owner against those of the *bona fide* holder of a Prussian bond without the coupon in respect of the interest thereon. There was sufficient evidence to show that such bonds were treated as negotiable instruments in Berlin, but there was no evidence of a similar usage in London. The Court held that they were not negotiable. It may further be added that the instruments which are negotiable by usage, retain their negotiability even if the usage is not sufficiently general to be called a custom, provided it can be proved that, at the time of the contract, the contracting parties had the knowledge of its existence.

Negotiability by estoppel—*Lastly*, an instrument, which, from its nature, is not strictly speaking, negotiable, may, in the hands of a *bona fide* holder for value, be treated as a negotiable instrument by the law of estoppel, provided the instrument on the face of it purports to be transferable by delivery or indorsement and delivery, or, provided its former holder represented it to be as such. If such an instrument is entrusted to an agent for being dealt in the market, the principal will be precluded from denying its negotiability against a person who has taken it *bona fide* and for value, even if the agent in dealing with the instrument exceeds the authority given to him. In *Fuller* v. *Glyn Mills Currie & Co.* (1914), 2 K.B. 168, the plaintiff had bought through a firm of stock brokers, certain shares of which one *H* was the registered holder. The plaintiff allowed the blank transfer forms signed by *H* and share certificate to remain in the possession of the stock broker who, to defraud him, pledged the same with defendant bank to secure an overdraft. It was held that the plaintiff was estopped from setting up his title as against the defendants, having left the certificates in the hands of the stock broker in such a condition as to convey a representation to any person who took them from the stock brokers that they had authority to deal with them. The principle, however, is not likely to be extended to persons beyond share or stock brokers who are clothed with authority to deal in stocks and shares. In *Hazarimull* v. *Satishchandra Ghose*, 46 Calcutta 331, a person who by fraud had obtained share certificates with transfer forms signed in blank from the owner, was held incapable of passing any title to a *bona fide* purchaser for value. However, it must be remembered that the negotiability by estoppel, as it is sometimes called, cannot be pleaded except against the party who dealt with the instrument as such. Thus an instrument, not generally recognized as a negotiable instrument, cannot possess the qualities of a negotiable instrument in every case.

Different forms of negotiable securities—The following are considered fully negotiable stock exchange securities:—

1. Bearer Bonds.
2. Scrips to bearer (scrip is a term usually employed to denote the provisional certificates or documents indicating the subscription to so much of a loan or so many shares. When the allotment money is paid, a scrip or provisional certificate is generally issued. Bonds are issued after the payment of final instalment. Scrips are held to be negotiable by the usage of bankers and dealers in public securities).
3. Shares or stock warrants to bearer generally.
4. Debentures payable to bearer generally.

Banker's title to securities pledged—There is no doubt that a fully negotiable type of security is an ideal form of cover as far as the banker is concerned, because he can hold the security against the whole world, provided he acts in good faith and gives value. He is required to act honestly and he should have no actual notice of any defect in the title of the customer offering the security. In a case (*London Joint-Stock Bank* v. *Simmons*, [1892] A.C. 201) decided more than 50 years ago, when a stock-broker pledged bearer bonds belonging to a client, the House of Lords upheld the bank's right to hold them against its advances to the stock-broker. It is generally agreed, that it is not necessary for the banker to probe into the question of his customer's title to the securities, so long as facts, the neglect of which would amount to bad faith, are not present when accepting bearer bonds as

cover. The banker should, however, see that all unpaid coupons are attached to the bonds which he is taking by way of security, as delivery of the bonds without the coupons attached is not considered as a good delivery according to the rules of stock exchanges. In the case of advances against Government promissory notes, the banker should satisfy himself regarding the following points:—(*a*) That the notes are properly indorsed in favour of the bank. (*b*) That all the prior indorsements are genuine and regular. (*c*) That the notes are not mutilated, torn or damaged. The banker advancing money against Government promissory notes has to take note of the dates on which interest on them will fall due and arrange to collect the same, and he should watch for any drawings of the bonds deposited with him.

The recent decision of the Privy Council in *Secretary of State* v. *Bank of India Ltd.* (appeal 55 of 1937) reversing the decision of Mr. Justice Wadia in favour of the Bank of India Ltd. and that of the Hon'ble the Chief Justice, Sir John Beaumont, who dismissed the appeal of the Secretary of State for India against Mr. Justice Wadia's decision, created a great stir in the banking circle in India. A new promissory note according to the instructions contained in the Government Securities Manual, issued in place of an old note, was considered for many years as free from any defect in one or more indorsements on the promissory note which the new note replaced. Thus, a holder of such a promissory note could not be called upon to compensate the Secretary of State for India, if it was found that the old note replaced by the new note had one or more forged indorsements. However, to the astonishment of the bankers and dealers in Government securities, the Privy Council held that the holder of the new note could be called upon to make good the loss suffered by the Secretary of State in issuing the new note in ignorance of the fact that one or more indorsements on the promissory note turn out to be forged ones. This decision has thrown a heavy responsibility upon banks and investors in Government securities. Efforts have been made to get the law amended, but they have so far been unsuccessful. In the meanwhile some bankers insist that the last preceding endorsement on a Government Promissory note should be by a Banker or that a customer should *himself* get the securities renewed in his name.

Non-negotiable Securities.

Generally, the non-negotiable securities are either inscribed stocks or registered stocks and shares.

INSCRIBED STOCKS—Inscribed stocks are so called, because the names of the holders of such stocks and the amount of their holdings are "inscribed" —*i.e.*, recorded in the books kept either with the government or the corporation issuing the same, or its agent. When such a stock is to be transferred, it is necessary for its owner or his duly constituted attorney to go to the office, where the books for the transfer of the securities are kept, and authorize the transfer of the stock he has sold. The holder of such stock does not, as he does in the case of bearer or registered stocks, receive any certificate of title which he is required to deliver to the vendee, but he gets merely a receipt of acknowledgment which is valueless as a security and is useful only as evidence that the holder has bought the stock to which it refers. As the production of the receipt is not quite necessary for sale of the stock, no reliance should be placed upon the receipt as a security for advances. It is, therefore, for the banker to have the stock transferred to his name or that of his nominee, as no charge can be obtained by the deposit of the stock receipt. When stock certificates to bearer with interest coupons

attached, or registered stock certificates, can be obtained at the holder's option in respect of his holding of inscribed stock and if the holder exercises such option, it affords a less cumbrous and more advantageous method of perfecting the security, than that involved in the formality attendant upon the transfer of inscribed stocks.

REGISTERED STOCKS AND SHARES—Most of the stock exchange securities belong to the second category, *viz.*, registered stocks and shares. They are so called, because the registration of their transfer in the books of the issuing company is necessary for acquiring a legal title to them. They are evidenced by certificates given under the seal of the issuing body. The memorandum and articles of association of the issuing companies lay down their respective rules for the transfer of their shares. Whereas most of the companies accept the standard form of transfer, some have their own special transfer forms and in those cases only such special forms should be used.

Equitable Title and its drawbacks.

LIABLE TO BE DEFEATED BY PRIOR EQUITABLE OR SUBSEQUENT LEGAL TITLE—The banker gets an equitable title to the securities deposited with him, when his customer enters into an express or implied agreement with him to the effect that the securities are given to him to secure a debt due, or to become due, from him to the banker. The chief defect, in case of an equitable title, is, that it can be defeated by a prior equitable title, or a subsequent legal title. For instance, a customer borrowed money from a bank on an equitable mortgage of shares duly registered in her name. Later on, it turned out that she held the shares as trustee for her children, so that, when the bank tried to enforce its security, it was faced with a claim on behalf of the children of its customer; as the children's equitable title was earlier than that of the bank, the claim of the children was upheld. Similarly, if a banker lends moneys to a customer against the equitable mortgage of certain shares of a company and subsequently the customer sells them to a person in whose name they are transferred in the books of the company, the banker's title to the securities will be defeated by the legal title of their purchaser. As, generally, companies require that the share certificates together with the transfer forms must be submitted to them for the registration of their transfer, the risk is minimized, but it is sometimes possible for the customer to obtain duplicate copies of the certificates, by making a false statement that the originals have been lost, and subsequently sell them and get them registered in the name of their buyer against whom the banker can have no remedy, as the buyer gets a legal title to them. However, the companies, before issuing duplicate copies of the share certificates reported to be lost, advertise the loss and their intention to issue the duplicates unless objections are received within a specified time, and require the shareholder applying for the issue of duplicate certificates to sign an indemnity bond in their favour. The risk that is attendant on such transactions when without the banker's knowledge, the borrower may have given a prior equitable title or may give a subsequent legal title to a third party is that the holder of the prior equitable title or of the subsequent legal title will get priority over the banker. If the registered owner is holding the securities merely as a trustee, which means the existence of a prior equitable title of the beneficiaries of the trust, the claims of the banker will be postponed in favour of the right of the beneficiaries.

FURTHER DRAWBACKS OF EQUITABLE TITLE—Moreover, in the absence of registration, there is also the danger that the company may have a lien

over the stocks and shares against the registered owner, or it may have received notice of a prior equitable title, before the banker takes steps to have the securities registered in his own name or that of his nominee. The committee of the London Stock Exchange require that a company desiring to have its shares quoted in the daily stock exchange list will not exercise any such lien. According to the rules of the Native Share and Stock Brokers Association of Bombay the companies whose shares are quoted retain the right to refuse to transfer the shares on the ground that the shares are subject to a lien on account of any debt or liability of the transferor to the companies. This adds to the risk of taking a blank transfer though the risk can be considerably minimised by sending a notice to the company as explained later. Another disadvantage of securing a loan by an equitable mortgage of shares is that the equitable mortgagee, not being registered as a holder of shares, receives no notice of any proposal to issue new shares, nor of any scheme of reorganization of the capital of the company which the company may contemplate; thus he may remain ignorant of the appreciation or depreciation in the prices of the shares which may be brought about by the company's proposed or actual action.

Objections to legal title—In the case of fully paid-up shares, from the point of view of the banker's security, a legal title, which the banker can get by having himself or his nominee registered as their holder in the books of the company, is very desirable, but the customer does not generally accept the arrangement, *firstly*, because he is required to pay all the expenses of their transfer and retransfer and *secondly*, because it may affect his credit. *Thirdly*, the customer may be a director of a company, whose shares are deposited, and, in case the shares are transferred from his name to that of the bank or its nominee, he may lose his seat on the board of directors by his failure to hold the minimum number of shares that a director of the particular company is required to hold. *Fourthly*, the articles of association of some companies provide for the restriction of transfers to people engaged in particular trades and consequently a banker may not be able to get the shares transferred to his own name or that of his nominee. It is, therefore, generally not necessary for the bankers to insist upon acquiring a legal title to the securities offered. Moreover, if the banker sends the share transfer forms and share certificates to the company concerned for effecting a legal transfer of the shares into his name or that of his nominee and they are duly transferred, the banker may be called upon to indemnify the company for breach of warranty if later on it turns out that the banker's customer had furnished him (the banker) with forged transfers or certificates.

Different methods of effecting Equitable Mortgage.

Bankers get an equitable title to registered securities in one of the following ways:—

(1) By mere deposit of securities.

(2) By deposit of securities with a memorandum.

(3) By deposit of securities with a memorandum, and duly executed blank transfers; see Appendix A, Form No. 26 (*b*), *post*.

(4) By deposit of securities and execution of a special power of attorney in favour of the banker, authorising him to sell them, on default in payment of the loan secured by them.

MERE DEPOSIT OF SECURITIES—The mere deposit of registered securities with a banker with the intention of creating a charge on them gives the banker an equitable title. This method is fraught with many risks. There is no written evidence regarding the purpose of the deposit. There are no express conditions regarding the debt which is secured, the rate of interest to be charged, the margin to be maintained, and the power of the banker to sell the securities. In the absence of any special agreement, the banker has to resort to the court for an order of sale. This form of equitable mortgage is, therefore, not popular with banks.

DEPOSIT OF SECURITIES TOGETHER WITH MEMORANDUM—Generally, when legal title to stocks and shares deposited as security cannot be obtained, bankers are satisfied with an equitable title by taking the securities together with a memorandum of deposit (see Appendix A, Form Nos. 26 and 26 (*a*), *post*) from the customer himself or from a third party, owning the securities, provided the loan to be secured is of temporary nature and the borrower is absolutely reliable. The chief aim of the memorandum is to safeguard the banker, as completely as possible, against disputes as to the purpose of the deposit. For instance, in the absence of some written evidence to the contrary, a customer might later on allege that he deposited the security to back an overdraft existing at the time of deposit, and not to cover any future advances. Consequently, the memorandum generally provides that the security shall be continuing, and vests in the banker the power to sell the security, when the customer defaults in clearing the advance. In the case of partly paid-up shares, the banker is generally authorized by the memorandum of deposit to debit the customer's account with any amount paid on his behalf for calls made by the company, subsequent to the deposit of the securities. In cases, where the stocks and shares are deposited by a third party, *e.g.*, a guarantor, to secure the advances granted to a customer, the memorandum provides that the surety shall not be discharged by any arrangements, as to the giving of time, etc., made between the banker and the principal debtor.

DEPOSIT OF SHARE CERTIFICATE WITH BLANK TRANSFER—Another method by which a banker can acquire an equitable title to securities received as cover, is to require the borrower to deposit the securities together with transfer forms, signed by the transferor but leaving the spaces for the name of the transferee as well as the date on which they are signed blank. If, however, the date is filled in the instrument, the documents must be lodged for registration within six months after the date appearing on the transfer otherwise companies concerned sometimes demand an explanation for the delay in registration leading up to difficulties. But generally, the date is omitted, as the chief object of a blank transfer is to escape stamp duty. A blank transfer will give the banker only an equitable title, until and unless he takes steps to register himself as transferee. Similarly, if a banker gets an equitable title to certain securities, which turn out to be trust property, the banker's claim to the securities will fail against that of the *cestui que trust*, the person, for whose benefit the trust is administered. The Morison Stock Exchange Enquiry Committee (1936) recommended the abolition of blank transfers by making them bad delivery, in view of the healthy effect it will have on stock exchange transactions in general. The committee however think that some concession in the payment of stamp duty should be made in respect of securities pledged with bankers by recognized stock brokers.

DEPOSIT WITH A POWER OF ATTORNEY—Bankers, sometimes, require the borrowers to deposit the securities and execute special powers of attorney in their favour or that of their nominees to deal with the stocks and shares on behalf of their customer. The provisions of the power of attorney will generally protect the banker against all probable risks, but he will still be an agent of his principal, with certain powers granted to him by the latter.

Precautions in case of Equitable Mortgage.

When the banker agrees to lend money against the equitable mortgage of stock exchange securities, he should take the following precautions:—

1. Save in exceptional cases a banker should not accept shares standing in the names of parties other than the borrower as security for his advances. When such an exception is made it is necessary to have the transfer form signed in the presence of a bank official or some other person well known to the bank. The registered owner of the shares should be required to give a letter to the effect that the shares may be pledged with the banker by the borrower in whose favour the shareholder relinquishes his rights in the shares to be pledged.

2. NOTICE TO THE COMPANY—The banker should send a notice to the secretary of the company, the securities of which are deposited with him, to the effect that he has a charge on them. (For a suitable form of notice, see Appendix A, Form No. 26 (*c*) *post.*) Such notice to the company, in the first place, will enable the company to inform the banker whether any one else has a prior charge on the securities. *Secondly*, this will secure priority for the banker over any fresh advance made by the company to the shareholder. *Thirdly*, it will prevent the issue of duplicate copies of share or stock certificates, and thus the borrower will be prevented from giving a subsequent legal title to another person. It will on the one hand bring to light any fraudulent dealings with the shares by the borrower and on the other hand enable the banker to get over the right of lien the company may claim for debt, or a claim against the shareholder arising subsequent to the receipt of the notice. Notice of lien, is generally forwarded to the company in duplicate by registered post with a request that the company should acknowledge the notice by indorsing and returning the duplicate and inform the banker of prior charges, if any, on the said shares.

NOTICE THROUGH COURT—In England, a banker can, to some extent, protect his equitable title to stocks and shares by applying to the court for a notice to be served on the company. The effect of notice under the order of the court makes it incumbent upon the company to advise the banker at least eight days before sanctioning a transfer, should the registered shareholder apply for a transfer of the shares. However, if after the expiry of the eight days, the equitable claimant fails to take any steps to obtain an order from the court, restraining the transfer of the shares or the payment of the dividends, the company may permit the transfer or make the payment. Such a precaution acts as good check on the customer, should he endeavour to transfer the stocks or shares deposited by him for a loan or overdraft because within eight days of receiving notice from the company of which the banker is holding the stocks or shares as security, the latter will take legal steps to obtain an order of the court restraining the company from sanctioning the transfer.

NOT TO PART WITH SHARES—On no account should the banker part with the share or stock certificates, as otherwise his customer may prejudice the banker's position by giving a legal title to another person.

GOOD FAITH TO BE OBSERVED—It is essential that the securities must be taken in good faith, which means that there should be no circumstances connected with them to the knowledge of the banker which, to an ordinarily prudent person, would give cause for doubts as to the true ownership of the securities.

POWER TO SELL—As a general rule, the banker obtains a memorandum signed by his customer, which generally contains a clause giving the former the power of sale. Apart from this, the mere deposit of the securities, when the transaction constitutes a pledge, sometimes implies the power to sell in case of the customer's default. When a definite date for the payment of the banker's loan has not been fixed, it is necessary for the banker to demand repayment, at a reasonable future date. The reasonable period in such cases will greatly depend upon the circumstances of the particular case, but a month's notice is considered sufficient. Even when it may not be otherwise necessary, the banker should give notice of his intention to exercise his right of sale.

Shares of Private Companies.

It is seldom that shares of private companies find favour with the lending banker. This is so, because, it is not only difficult but almost impossible for the banker to form a correct idea about their financial position, as private companies, are not bound to publish their balance sheets. Even if they issue them, it has to be remembered that neither accounts nor their balance sheets need be certified by Registered Accountants. As it is rarely that such shares are dealt in the market, a banker lending against them cannot form any reliable estimate as to their approximate value. Again, while accepting the shares of a private company as security for an advance, care has to be taken that their transfer to the banker or his nominee may not be refused by the company's directors. Lastly, such shares are not easily marketable and in case the banker wishes to dispose of them, he will find it difficult to do so.

CHAPTER XII

ADVANCES AGAINST GOODS AND DOCUMENTS OF TITLE TO GOODS

DIVERGENT VIEWS AS TO THEIR SUITABILITY AS SECURITIES—In addition to the securities dealt with in the previous chapters, bankers, particularly in large ports and other commercial centres, advance funds against produce, goods and documents of title to goods. Whether or not such securities are suitable for securing banker's advances is a question on which divergent views are held by some of the leading authorities on the subject of banking. Sir John Paget in his book, The Law of Banking (Fourth Edition, pp. 376 and 377), says,

> Provided the banker is dealing with honest and responsible persons, documents, of title to goods, such as bills of lading, delivery orders, warehousemen's certificates, dock warrants and letters of lien or hypothecation, are convenient secuities for advances. By means of them goods can be effectively pledged, which obviously could not otherwise be so utilized by reason of their bulk or location. By bills of lading in special, goods on the high seas can be hypothecated before arrival and thus used as cover for bills given for the price or for advances. Naturally, a very large proportion of this business is transacted through brokers and other agents of the owners of the goods, and the Factors Act, 1889, and the Sale of Goods Act, 1893, are praiseworthy efforts to minimize the banker's risks in dealing with such agents and incidently quasi-owners, such as vendors who have already sold the goods elsewhere and vendees who may not be in a position to pass a good title to a sub-vendee or pledgee. It is not the scheme of these Acts to elevate the various documents of title to the position of the banker's ideal security, the fully negotiable instrument, to which he acquired an indefeasible title whatever the customer's position, whether the customer be honest or dishonest, whether the security be the customer's own, or he has authority to deal with it or not, and whether the banker takes it for an existing debt or a fresh advance..........and, unfortunately the provisions of the two Acts are so tangled, so overlapping, so complicated by cross-references and the idea of reducing everything to the common denominator of ' the mercantile agent,' that, for want of certainty, the safeguards are not so complete or re-assuring as they were doubtless intended to be.

On the other hand, such securities do not find favour with Mr. Gilbart and Mr. John Hutchison.

According to Mr. Gilbart (Journal of the Institute of Bankers (1922), January, p. 7.).

> Another kind of security is bills of lading and dock warrants. Advances upon securities such as these must be considered as beyond the rules which prudent bankers lay down for their own government, they can only be justified by the special circumstances of each case. But in truth, no banker should readily make advances upon such securities. Now and then they may take them as collateral security for an advance to a customer who is otherwise respectable, but if such customer requires such advances frequently, not to say constantly, it shows that he is conducting his business in a way that will not ultimately be either for his own advantage or that of his customer.

Mr. Hutchison is even more scathing. In his book, The Practice of Banking (1887), Vol. III, pp. 327 and 328, he says,

> It will be observed from the forms of the documents known as Brokers' Undertakings or Brokers' Engagements in connection with produce..........that these are utterly worthless as securities..........If assistance by traders is required in this way, the formation of a " Traders Loan Company " might be projected with its object openly professed, or a " Traders' Pawn-broking Company," to

meet the case of loans made exclusively on warrants, delivery orders, and ware house-keepers' certificates. There might, however, be instituted to that effect a "General Hypothecation Company," by whom guaranteed transferable warrants for convenient amounts might be issued and occasionally accepted by the banks against advances.

DIVERGENCE EXPLAINED—In view of such pronounced divergence of opinion between well-known writers on the subject, the reader is bound to ask the reasons for conflicting views? Mr. Steele attributes Mr. Gilbart's view to the fact that his experience of the business of the kind must, necessarily, have been very limited. Regarding Mr. Hutchison's opinion, on the other hand, it may be said, that, knowing the complications and certain risks involved in accepting such securities, he takes a pessimistic view, whereas, Sir John Paget, realizing that there are risks of some kind or another even in the case of the best of securities against which bankers lend money, does not see any reason for discouraging bankers from investing funds in the securities under discussion. The change in the view during the last one hundred years or so, is also due to the expansion of modern commerce, which could not have taken place but for the facilities which those engaged in it are able to get from their bankers.

Before considering the precautions which bankers should take in the case of advances against goods and documents of title to goods, it is desirable to see how these securities compare with other kinds of securities, accepted by bankers. Produce, goods and documents of title to goods, have the following advantages :—

Advantages.

TANGIBLE SECURITY—Such securities are better than guarantees and bills of exchange, because they enable the banker to fall back upon something tangible, in case of the failure of customers borrowing against such securities. When an advance is ordinarily secured by a guarantee, the personal security of the borrower is coupled with that of another person, called surety. In case both the parties - the principal debtor and his guarantor—fail, the banker's claim ranks only equally with the claims of other unsecured creditors of the bankrupt customer. It should also be noted, that a banker, making an advance against goods and documents of title to goods, is, in case of the failure of the debtor, generally able to recover the amount due to him by selling the goods, while, for the balance, if any, he can prove his claim against the estate of the debtor.

FREEDOM FROM HEAVY FLUCTUATIONS IN PRICES—The second advantage in favour of securities of this kind, is that, if the goods advanced against are necessaries of life, their prices in normal times, are not liable to wide fluctuations. Prices of necessaries of life such as wheat, cotton, sugar, etc. unlike those of certain kinds of shares, do not fluctuate very widely.

EASY TO SELL—The third point in favour of securities of this kind is that they can be sold more easily than certain types of securities such as lands, buildings, etc.; particularly if the commodities pledged are food stuffs like rice, wheat, or sugar, the banker has practically no difficulty in realizing them. In case of immovable property the sale and the transfer of the property may take months, even if the banker is willing to accept less than its fair price. The markets for staple products and certain other kinds of goods have become more stable in modern times, than was the case more than half a century ago, when international trade was not as much developed as at present, and, there-

fore, the old prejudice against this class of business had gradually died out.

Advances only for short periods—The fourth advantage in favour of these securities, is that advances against them are generally seasonal and consequently for short periods; therefore, the banker in lending funds against them, has not to lock up his money for any considerable length of time, whereas, in the case of advances against immovable property, the investment is usually for a long period.

Easy to evaluate—Lastly, the prices of produce and goods can be more easily and accurately ascertained than the prices of immovable properties and certain other types of securities. A banker can keep himself in touch with the markets in staple commodities by getting reports from commodity brokers, as well as by studying the market reports published in the daily newspapers.

Other advantages—In addition to the abovementioned advantages, from the point of view of the banker, an important point in favour of such securities, is that they help the commerce of the country and enable the people to get food, clothing, and other necessaries of life far more easily and cheaply than would otherwise be the case. If a merchant has to restrict his purchases to the extent of his capital, not only will he have to forego the advantage of lower prices, but also he will be unable to keep sufficient stock or variety of goods for his customers, who in their turn, will have a restricted field for making purchases and at comparatively high prices. This is one of the main reasons why bankers should accept such securities.

Drawbacks.

As against the above advantages, these securities suffer from the following drawbacks :—

Risk of deterioration—Most of the goods are liable to deterioration and damage unless strorage arrangements are quite satisfactory. For instance, a banker advancing money against fruits, oilman's stores, vegetables, etc., has to be very careful in seeing that they are sold before they decay. It is not infrequent that the lender is put to loss, simply because he does not have the necessary experience, or knowledge, about the goods accepted by him as security. If a banker, for example, makes advances against rubber, he should know that it shrinks and loses weight when stored for a considerable time. Similarly, while accepting maize as security, he should not forget that it "sweats" more freely than other kinds of produce.

Fall in prices—Certain kinds of goods are liable to wide fluctuations in demand as their market may depend upon fashion, and a change in fashion may lead to a considerable reduction in demand. Reduced demand, without a corresponding reduction in supply is bound to bring about a fall in prices which will spell ruin to a holder who holds large stocks of such goods.

Greater risks of fraud—There are greater risks of frauds in connection with such securities than in the case of certain other kinds of securities. For instance, if an advance is made against sugar, all the bags said to contain sugar may not have sugar in them. Some of them may contain merely sand or sawdust. There is also the risk of the quality of the goods being inferior to that stated in the invoice. A banker cannot know whether the contents of the cases offered as security, are in accordance

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with their invoices, unless the documents relating to the goods in question include certificates from reliable packers.

Reasons for their unpopularity in India.

In addition to the disadvantages stated above, such advances have not been popular in India for the following reasons:—

FLUCTUATIONS IN PRICES DUE TO SCANTY MEANS OF TRANSPORTATION—In former days when the means of transportation and communication were but scanty, the Indian markets were not well organized. This resulted in fluctuations in prices of goods to such an extent that even expert traders and merchants could not forecast the future demand for, or supply of, these commodities. Consequently, cases were not uncommon, when bankers came to grief, on account of having advanced large sums against such goods.

UNSETTLED STATE OF LAW—The law with regard to this kind of security was formerly in a less settled and satisfactory condition than it has since been. Even at present it is not easy to find experts in this branch of legal science. But for some Court decisions, there was no legal enactment to speak of, which could guide bankers contemplating to advance money against goods and produce, or documents of title to goods. The position has somewhat been improved by the passing of the Indian Sale of Goods Act, 1930 (III of 1930).

ABSENCE OF PUBLIC WAREHOUSES—In the absence of public warehouses in India, the produce is stored generally either in the godown of the borrower, or the lender, or even sometimes in a hired godown. The borrower undertakes to pay the rent of the godown and effect insurance of the produce stored. India cannot boast of recognized warehouse-keepers, such, as Europe and America possess. The law in those continents recognizes the entity of warehouse-keepers whose business is to store goods, produce and merchandise on behalf of traders, exporters, and importers. They issue what are known as the warehouse warrants, being negotiable securities: consequently, their ownership and, therefore, the title to the goods to which they relate can be effectively transferred to the holders in due course thereof by delivery of the warrants coupled with indorsement. The general practice in India, of handing over the key of his godown by the borrower to the banker may deprive the former of facility for sale. However, as the present writer understands, bankers in India, generally afford every reasonable facility to such customers. They allow them to show samples to prospective buyers, grant partial releases against payment, and at times even deliver goods against trust receipts, thus allowing the borrower to transport them and repay the advance after negotiating the railway receipt, or the bill of lading. The late Mr. B. F. Madon had prepared a draft bill for the encouragement of the establishment of independent warehouses in India, and to provide for their proper supervision and control, but owing to his death, no further attempt appears to have been made in this connection.

General Precautions.

We shall state briefly the important precautions required to be taken in the case of advances made against the security of goods or documents of title to goods, and then consider the principal documents of title to goods as banker's securities. For forms of agreements used by Indian joint stock banks for advances on the security of pledge of grain and produce, see Appendix A, Form Nos. 30, 30 (*a*) and 30 (*b*), *post*.

BORROWER TO BE TRUSTWORTHY AND EXPERIENCED—It is very necessary for the banker to see that his customer, who wishes to borrow money against the security of goods or documents of title to goods is trustworthy, prudent, capable and has practical experience of the produce or goods which he is handling. As in such transactions, the risks of fraud are very great, it is absolutely essential that the customer should be entirely trustworthy. For instance, when a banker is offered 500 bags of cardamon, lying in the customer's godown as security for an advance, it is not possible for the banker to examine the contents of each and every bag. He can, at the utmost open a few bags to see what they contain. It is necessary, from the banker's point of view, that his customer should also be well-acquainted with the business, so that he may be able to dispose of the goods to his advantage as well as to the advantage of the banker who has advanced money against them. Many a time bankers have had to suffer losses on account of the inexperience of their customers. An experienced businessman, dealing in a particular line, knows the risks of his trade. For example, a manager of a provision store knows from his experience what provisions are liable to rapid deterioration or decay, at certain times, in a particular country. It is preferable to deal with members of recognized trade associations formed to safeguard the interest of their respective trades.

BANKER TO BE FAMILIAR WITH DIFFERENT MARKETS—It is very necessary for a banker undertaking this business, not only to acquire familiarity with the different markets, such as cotton market, wheat market, etc., but also to have first hand knowledge of the conditions and customs peculiar to each trade. For instance, if he advances large amounts of money to cotton merchants, he must be sufficiently familiar with the conditions of the cotton market so that he may be able to know when the price of cotton is inflated, otherwise he will not be able to regulate the margin for loans against the commodity, according to the conditions of its market. Similarly, if he does not keep himself in close touch with the fluctuations in its price, he will not be able to call upon his customer to maintain the margin agreed upon by the customer and this may result in the value of the security falling below the amount due from the customer. There may also be "rings" and "corners" in a particular market, and it is, therefore, advisable for the banker to be in close touch with the markets relating to the produce and goods against which he is making advances.

TO DEAL WITH OWNER OF GOODS OR AN AGENT IN POSSESSION—In order that the banker's legal title to this class of securities be unassailable, he should on the one hand, deal with the owner of goods or the agent in possession, and on the other hand should see that he takes possession—actual or constructive—of the goods charged. This is because a transferee of goods, unlike the transferee of a negotiable security, cannot get a better title than the transferor except in five cases dealt with in sections 27 to 30 of the Sale of Goods Act, 1930 (III of 1930).

The five exceptions are :—

(*a*) Those who having sold goods continue in possession of the goods or of the documents of title to the goods (section 30 (1)).

(*b*) Those who, having bought or agreed to buy goods, obtain with the consent of the Seller, possession of goods or of the documents of title to the goods (section 30 (2)).

(c) Mercantile agents, who, acting in the ordinary course of business of mercantile agents, have with the consent of the owner, possession of the goods or the documents of title to the goods (section 27).

(d) Part owners who, with the permission of the co-owners, are in sole possession of the goods (section 28).

(e) Those who have obtained possession of goods under a voidable contract which has not been rescinded at the time of the transfer (section 29).

In the above stated cases a good title to the *bona fide* purchasers or pledgees for value without notice can be passed.

TO TAKE POSSESSION OF THE SECURITY.—In order to safeguard his interests, it is necessary for the banker to see that the goods are delivered to him; and he should generally insist upon the delivery being made before the grant of the loan. However, it is not necessary for this purpose to have the goods removed from the customer's godown to that of the banker, as the handing over of the keys of his godown by the customer to the banker and transferring the services of the watchman, if any, by the customer to the banker constitute constructive delivery or transfer of possession. When it is not practicable to have even constructive possession of the goods at the time of the grant of the loan, a banker may ask the customer to enter into a contract of hypothecation by which he should undertake to subsequently pledge the goods, when he is required by the banker to do so. In this way a banker can, no doubt, acquire an equitable title to the goods, but he still runs the risk of someone else acquiring a legal title without notice of contract of the hypothecation and thus depriving the banker of his security, because such contracts are good only in equity and are not recognized by law. It has been held in India, that a subsequent pledgee of goods is entitled to priority over the person in whose favour a previous hypothecation bond has been executed in respect of the same goods (*Co-operative Hindusthan Bank Ltd.* v. *Surendranath De*, 59 Cal. 667 (683)). To illustrate the principle stated above, we give below the facts of the well known case *In re Hamilton Young & Co.* (1905), 2 K.B. 772. Messrs. Hamilton Young & Co., shippers of piece-goods used to buy cloth and after getting the same bleached and dyed used to consign it to Messrs. Ewing & Co. of Calcutta. The National Bank of India Ltd., which financed Hamilton Young & Co.'s purchases of the cloth procured from the said firm a letter of lien in the following form:—"We beg to advise having drawn cheques on you for £—, which amount please place to the debit of our loan account, as a loan on the security of goods in course of preparation for shipment to the East. As security for this advance we hold on your account and under lien to you the undermentioned goods in the hands of—as per their receipt enclosed: These goods when ready will be shipped to Calcutta and the bill of lading duly indorsed will be handed to you and we then undertake to repay the above advance either in cash or from the proceeds of the bill on Ewing & Co., Calcutta, to be negotiated by you and secured by the shipping documents representing the abovementioned goods, etc." On the failure of Hamilton Young & Co., their trustee in bankruptcy claimed certain goods in the hands of the bleachers. The court held that Hamilton Young & Co.'s trustee in bankruptcy could not succeed, as the letter of lien given by them to the banker was a document which evidenced a transaction of the most ordinary kind as between bankers and merchants.

GOODS OR PRODUCE OFFERED SHOULD BE NECESSARIES OF LIFE—The banker should see that the goods offered as security, are more or less necessaries of life, which can be easily sold. For instance, it is not at all difficult to sell wheat, cotton, jute, sugar, etc., in large quantities, without any appreciable reduction in price. On the other hand, it is difficult to sell finished goods, the demand for which is more or less limited. Another advantage in favour of staple goods or articles is that their prices are comparatively steady, and, therefore, the risk which a banker runs in advancing moneys against them is less than that in the case of other goods, the prices of which depend very largely upon the vagaries of fashion.

PROPER CARE IN VALUATION—The banker has to be careful in the valuation of goods. He has to satisfy himself about the quantity, as well as the price of goods offered as security. For instance, paddy loses in weight when it is stored up for a period, therefore, it is not quite safe to assume that its weight at the time of sale will be the same as at the time of its acceptance as security, particularly when the two transactions are separated by a considerable length of time. In advanced agricultural countries of Europe and America where advances are sometimes made against standing crops, the valuation problem is more acute, as only experts or exceptionally experienced persons are able to estimate accurately the value of such crops. This done, the true owner of the standing crop gives a letter of hypothecation to the banker, and the former harvests the crop, stores it, and sells it on behalf of the latter, who has a first charge on the produce for his advances. Such advances, however, except for some stray instances of loans against tea, rubber and coffee estates in Assam, Ceylon and the Nilgiris, are not very popular with the Indian joint-stock banks, although the indigenous banker and the co-operative banks all over the country finance the ryots in their agricultural operations. As the average Indian agriculturist generally labours under heavy debts incurred as a result of his poverty, ignorance and improvidence, and agricultural land being the only security he can offer, which is not easily saleable, banks in India, are naturally very reluctant to entertain proposals to advance moneys to the agriculturist for his various agricultural operations.

DANGERS OF OVER-VALUATION—Although from the point of view of valuation, goods and produce are better than certain other securities, some difficulties in this connection do crop up, on account of the great risks of fraud. Usually a banker ought to employ a broker who is competent to value them. The banker should take into consideration the cost of the goods as shown in the invoice, but he cannot absolutely depend upon the same as the prices given in the invoice of the goods might have been intentionally inflated. If possible, the banker should see how the invoice prices compare with their selling rates. The banker has also to see that the goods left with him are neither unsaleable, nor such as are saleable only at a considerable reduction in their invoice price. In the case of packed goods, certificates of reliable packers may generally be depended upon

HEDGING OF UNSOLD STOCKS—If a banker has advanced money to a customer of comparatively small means against the security of commodities such as cotton, wheat, etc., it may be desirable to "hedge" the unsold stocks by the sale of "futures" with the consent of the owner of the goods or his legal attorney. Thus, if the price of the security goes down, the fall in the same will be made good by the difference in the sale price and the settlement price of the forward sale.

PROPER STORAGE AND INSURANCE OF GOODS PLEDGED—The banker should see that the goods against which money has been advanced, are properly stored and insured against loss by theft, fire, etc. In this respect, a banker can never be too careful. For example, where the produce stored in a godown is adequately insured against fire and theft, there might be a danger of damage from leakage in the roof of the godown due to heavy rains, which may cause the security to "eat its own head off." The locality should be carefully reconnoitred, as a neighbouring workshop, a chemical laboratory, an adjacent fireworks store, or a magazine of explosives, may cause damage to the godown. If it is near a canal or a river, a flood may prove dangerous. The godown may be liable to a fire, resulting from defective electric fittings in the building. When the produce stored is not adequately insured, or the godown is not safe, the banker should obtain the necessary authority from his customer to warehouse the same elsewhere and have it adequately insured at the expense of the customer. It should be made clear, in the agreement of deposit, that such payments as the banker may make by way of rents, salaries of watchmen and insurance premia, will form a part of the advance and carry interest as in the case of the amount advanced.

STRICT SUPERVISION REGARDING RELEASES—While effecting a release, the banker should take care that the proportionate value of the produce to be released is received. He should personally supervise, or depute a responsible employee to see that the proper quantity of the produce is released, and that the residuary security adequately covers the advance still outstanding. Banks have sometimes lost large sums of money by frauds committed by the customers in collusion with the godown-keepers who in return for small *bakshish* have allowed the customers to take away much larger quantities of produce and goods than those authorized by the banks. It happens, not infrequently, that when produce of different grades and kinds is pledged, the borrower effects releases only of the saleable grades and the banker becomes burdened with goods for which he cannot find a market, or the value of which is inadequate to repay his advance. He should also arrange for periodic inspections to see that the produce pledged has not decayed or deteriorated due to long storage.

Advances against Documents of Title to Goods.

Before considering the particular points arising in connection with advances against documents of title to goods, it is necessary to explain the principal documents which are used in the ordinary course of business as proof of the possession or control of goods.

The following are the principal documents of title to goods :—

1. Bills of lading.
2. Dock warrants.
3. Warehouse-keeper's certificates.
4. Delivery orders.
5. Railway receipts.

BILL OF LADING—"A bill of lading (see Appendix A, form No. 35) is a document issued and signed by, or by the authority of, a ship's captain, acknowledging that the goods mentioned in the bill have been duly received on board and undertaking to deliver the goods in the like order and condition

as received, to the consignee or to his order or assigns, provided that the freight and any other charges specified in the bill of lading have been duly paid" (Practice and Law of Banking by H. P. Sheldon, pp. 399 and 400). It may also be stated that although a bill of lading is *prima facie* evidence that the packages containing goods of particular description and weight were put on board the ship, the ship's captain has the right to prove that the goods of that description were not actually put on board. What he does is merely to certify by number or weight, or both, the shipment of particular bales or cases and he is thus, in no way responsible for their actual contents. Generally, a bill of lading contains an agreement as to apportionment among all the parties interested, of loss caused deliberately for the preservation and the safety of the ship, *e.g.*, the throwing overboard of the cargo when the ship is too heavily loaded. Bills of lading are generally drawn in sets of three. To avoid the risk of loss in transit, one copy is sent by one mail and another by the following mail, while the third is kept by the shipper. According to the law merchant, the bills of lading have always been regarded as symbols of title. In *Sanders* v. *MacLean* (1883), 11 Q.B.D. 327, Bowen L. J. said, "A cargo at sea while in the hands of the carrier is necessarily incapable of physical delivery. During this period of transit and voyage, the bill of lading by the law merchant is universally recognized as its symbol, and the indorsement and delivery of the bill of lading operate as a symbolical delivery of the cargo. Property in the goods passes by such indorsement and delivery of the bill of lading, whenever it is the intention of the parties that the property should pass, just as under similar circumstances the property would pass by an actual delivery of the goods. And for the purpose of passing such property in the goods and completing the title of the indorsee to the full possession thereof, the bill of lading, until complete delivery of the cargo has been made on shore to someone rightfully claiming under it, remains in force as a symbol and carries with it not only the full ownership of the goods, but also all rights created by the contract of carriage between the shipper and the shipowner. It is a key which in the hands of the rightful owner is intended to unlock the door of the warehouse, floating or fixed, in which the goods may chance to be. The above effect and power belong to any one of the set of original bills of lading which is first dealt with by the shipper. Except in furtherance of the title so created of the indorsee, the other originals of the set are, as against it, perfectly ineffectual and have no efficacy whatever, unless they are fraudulently used for the purposes of deceit."

Bill of Lading Distinguished from Bill of Exchange—It may be added that a bill of lading is not a negotiable instrument in the same sense as a bill of exchange is. If, as already stated, a bill of exchange payable to order and duly indorsed or one payable to bearer is stolen, the party taking it in good faith and for valuable consideration, acquires a good title thereto. In the case of a bill of lading, however, its transferee would not get a better title than that of its transferor: the transferee of a stolen bill of lading gets no title to it, as its transferor has none. A bill of lading bears some resemblance to a cheque crossed "not negotiable," yet under certain circumstances, the former acquires a much wider negotiability than is possessed by the latter. According to Sir John Paget, "the only exceptional feature akin to negotiability possessed by bills of lading is their acknowledged capacity to defeat the unpaid vendor's right of stoppage *in transitu* when transferred with authority to a *bona fide* transferee for value" (see section 53 of the Sale of Goods Act, 1930 (which has the same effect). Otherwise, the buyer of goods being insolvent, the unpaid seller has the right of stopping the goods in

transit and to resume possession of them while they are in course of transit, until the payment in respect of the goods sold is made by the buyer.

DOCK WARRANTS—A dock warrant (see Appendix A, Form No. 36, *post*) is a document issued by a dock company stating that the goods as described therein, are registered in its books and are deliverable to the person mentioned therein or his assigns, by indorsement.

WAREHOUSE-KEEPER'S CERTIFICATES—A warehouse-keeper's certificate (see Appendix A, Form No. 37) is a document given by a warehouse-keeper, certifying that he holds certain goods described in the certificate and awaits instructions from the person to whom the certificate is addressed. It is a deposit receipt only and hence not transferable. This kind of document must be distinguished from a delivery order. If the owner wants to get the goods out of the warehouse, he must obtain a warrant from the warehouse-keeper, whereby he may be authorized to assign the goods or the certificate should be made out in the name of the bank advancing against such security. Moreover the certificate should make it clear that the goods mentioned therein are subject to rent for those goods only, otherwise the banker may find a clause in the certificate by which the warehouse-keeper can claim a lien in respect of all rent and charges in respect of other goods due from the party to whom the certificate was originally issued.

DELIVERY ORDER—A delivery order (see Appendix A, Form No. 37 (*a*), *post*) is a document addressed to the proprietors of the warehouse where the goods are lodged by their owner and purports to convey his instructions regarding their delivery. Either the owner himself or his assign fills in the name of the person who is authorized to take delivery of the goods. Delivery orders are transferable by indorsement and delivery. The mere possession of such a document by a banker, as pledgee, will not, in the event of bankruptcy of the customer, suffice to transfer the property in them until it is presented to the warehouseman or wharfinger who attorns it to the holder. From the point of view of the banker it is very desirable to have the goods transferred into his name, but failing that if in exceptional cases he hands the delivery order back to the customer on "entrusted" terms to have the goods stored in the banker's name, he may find that the delivery has been stopped or his customer has obtained delivery himself for transferred the property to some one else or become insolvent.

DISTINCTION BETWEEN DOCUMENTS THAT GIVE TITLE TO GOODS, AND THOSE THAT ARE MERE RECEIPTS—In dealing with documents relating to goods, it is necessary to distinguish between those documents that give title to the goods named in them and those documents which are mere receipts acknowledging that the goods have been deposited in a warehouse. To the first of these two classes belong the bill of lading, the dock warrant and the warehouse certificate. This distinction is important as by the possession of the documents which give a title to the goods, the possessor can take the goods out of the "order and disposition of the bankrupt." This is otherwise known as the doctrine of "reputed ownership." The effect of it is that goods which at the commencement of the insolvency are in the possession or order or disposition of the insolvent in his trade or business by the consent and permission of the true owner under such circumstances that he is the reputed owner thereof, vest in the official assignee and are divisible amongst his creditors (section 52 (2) (*c*) of the Presidency Towns Insolvency Act, 1909). The object of the provision is to prevent traders from gaining a delusive

credit by a false appearance of substance to mislead those who deal with them. But, unless the goods have been registered in the name of the pledgee, the possession of the warehouse-keeper's certificates or receipts, or delivery order, is of no avail against the trustee in bankruptcy for claiming possession of the goods. In *Official Assignee of Madras* v. *The Mercantile Bank of India Ltd.*, [1935] A. C. 53, the Privy Council decided that the pledge of a railway receipt by a trader to the respective bank by indorsement operated as a pledge for the goods. The bank, by handing the receipt to the pledgor to enable him to collect the goods from the railway company and place them in a warehouse on behalf of the bank, did not thereby release pledge. It was lastly held that goods so pledged are not in the possession, order or disposition of the pledgor within the meaning of section 52 (2) (*c*) of the Presidency Towns Insolvency Act, 1909 (III of 1909) even where the railway receipt has been handed to the pledgor for the purpose above stated.

ADDITIONAL RISKS IN CASE OF ADVANCES AGAINST DOCUMENTS OF TITLE TO GOODS—As explained in an earlier part of this chapter, in addition to the drawbacks of making advances against goods, documents of title to goods as security for banker's advances, entail certain other risks. There are greater chances of banks being defrauded by means of documents of title to goods, than by goods. The documents offered may be forged ones, or the number of bags or packages stated in the bill of lading or railway receipt, may be fraudulently raised. Moreover, the carrier does not guarantee the contents of the cases or bags. A person may consign fifty bags containing sand or sawdust and may declare their contents as wheat, obtaining a railway receipt for fifty bags of wheat. Consequently, the banker advancing money against such a receipt, will have no claim against the railway company on the ground that the contents of the bags do not tally with those given in the receipt. The railway receipts, as issued at present by the several railways in India, are not negotiable; moreover, they do not give a full and correct description of the goods. Consequently, a railway receipt is not looked upon as a good security. In a recent decision (*Official Assignee of Madras* v. *Mercantile Bank of India*, A.I.R. (1933) Mad. 207) of Justice Waller the above view was corroborated. Fortunately for the Indian banker, their lordships, the Chief Justice and Justice Stone of the Madras High Court, have reversed the judgment of Justice Waller and have held that the indorsement of a railway receipt had the effect of a pledge of goods. It would, indeed, be a great service to the banking and commercial community, if the railway administrations were required to give full description of goods for which they issue railway receipts and the railway receipts were made negotiable. Again, documents of title are not negotiable securities, and title to the goods cannot, under any conditions, be acquired if the documents are stolen; but as such documents are transferable, they can be taken as security from (1) the owner of the goods, (2) the transferee, or (3) the mercantile agent in possession of the document as agent. Supposing a bill of lading is sent to X, along with a bill of exchange, on the understanding that the bill of lading is to be kept against the acceptance of the bill of exchange by him, but if he keeps the bill of lading and pledges the same with a banker who takes it in good faith and for value, and returns the bill of exchange unaccepted, the banker will get a good title to the bill of lading. However, if the bill of lading is obtained by trick, or theft, the banker will get no title. In the case of railway receipts deposited as security for an advance, the banker should be careful to notify the railway company of his lien over the goods, otherwise there is the danger

of the borrower taking delivery of the consignment by giving an indemnity bond to the company, with the result that the banker may have to seek the help of the Court for a decree against the borrower, who may, by that time, have become insolvent, insane, or dead. In the United States of America, the railway receipts are sometimes certified as genuine. In *Mercantile Bank of India Ltd.* v. *Central Bank of India Ltd.*, 55 I.A. 75, the Privy Council was called upon to decide between the competing claims of two banks with regard to goods represented by railway receipts. A firm of merchants obtained a loan from the Central Bank of India Ltd., on the pledge of certain railway receipts. In accordance with the usual practice, the bank handed over the railway receipts to the merchant for the purpose of taking delivery of the goods and placing them in a warehouse on behalf of the bank. The merchant, however, fraudulently used the same receipts to obtain a second advance from the Mercantile Bank of India, Ltd. who obtained delivery of the goods from the railway company. The Central Bank of India, Ltd. filed a suit against the Mercantile Bank of India, Ltd. for damages for conversion and the claim was decreed on the ground that the former bank owed no duty to the latter bank to adopt precautions against the fraud of the merchant and that in any case there was no neglect of any precaution on its part as it followed the practice which the Mercantile Bank of India, Ltd., itself adopted of handing over the railway receipts for the limited purpose of clearing the goods and storing them in the bank's godown. The merchant, therefore, could not transfer a better title than they possessed—a title subject to the pledge to the Central Bank of India, Ltd.

Right of stoppage in transit.—An unpaid seller of goods has the right to stop the goods on their way to the buyer if the latter becomes bankrupt before the goods are delivered to him. The seller's right is not affected, in case the buyer re-sells the goods without the consent of the seller. But, if the seller has parted with a bill of lading, or other document of title to goods and if the buyer transfers the document to a person who takes it in good faith and for consideration, the seller's right of stoppage ceases. Thus, the banker's right is not affected by the right of the unpaid vendor of goods when documents of title to goods are pledged, as the unpaid seller's right is subject to the rights of the banker, who is the *bona fide* transferee of the documents for value. But, in order that the seller's right may be defeated, it is most essential that the bill of lading must have been received by the buyer with the consent of the seller of the goods. If the bill be obtained by trick or larceny, the protection is not extended to the transferee. If the bill is obtained by false pretences, then also the right of stoppage is not defeated (section 53 of the Indian Sale of Goods Act, 1930).

General Precautions.

The following general precautions may be taken by bankers while advancing money against documents of title to goods :—

Customer's integrity and experience—The honesty, reliability and the experience of the customer are most essential. Unless the banker can rely upon his customer, he is unable to satisfy himself as to the genuineness of the documents of title to goods. As stated already, the customer's experience of the line is necessary to avoid the sale of goods at a loss, or their deterioration.

CERTIFICATE OF PACKING.—In order to ascertain the contents of the packages, the banker should ask for the certificate of a reliable packer, or depute a responsible representative to supervise the packing—the cost of supervision being borne by the borrower.

COPIES OF BILL OF LADING—The banker should try to get all the copies of the bill of lading. The need for this will be understood when we know that the captain of a ship is under no obligation to inquire into the title of the holder of the bill of lading and will ordinarily give him the delivery of the goods, provided he does not know that another copy is pledged with the banker.

NO ONEROUS CONDITION—The banker should see that there are no onerous clauses in a bill of lading and the charter party. Sometimes a bill of lading may contain an onerous clause such as "and all other conditions as per charter party," which may involve the payment of heavy charges incurred through no fault of the banker or his customer; therefore, before advancing money against them, the banker should carefully see what other conditions are laid down in the bills of lading.

ASSIGNEE'S INDORSEMENT IN BLANK—It is always in the interest of the banker to get the bill of lading indorsed, in blank, by the consignee. In such a case, the liability for paying the freight falls upon the customer and not upon the banker.

INSURANCE POLICIES—It is necessary that the banker should require the insurance policy in respect of the goods. He should insist upon having the policy, and not the broker's note. Some shippers get open policies issued by insurance companies. It is not enough to have an open insurance policy only, but the insurance company should state that such and such goods are covered under that policy.

TRUST RECEIPTS—When the banker has to part with the bill of lading, or the goods, without receiving the amount due from the customer, it is essential that he should get a trust receipt (see Appendix A, Form No. 31, *post*), signed by his customer, agreeing to hold the goods or their sale proceeds in trust for the banker, so long as the entire amount, due to the banker is not paid off. If a customer, who has signed such a trust receipt, fails to hand over to the banker, the sale proceeds of the goods sold, the former will be liable for criminal breach of trust. A decision of the Madras High Court in regard to these trust receipts, however, has almost stunned the banking community in India. The Central Bank of India Ltd. instituted a prosecution against two groundnut exporters in Madras, but the court's decision has put some difficulties in the way of bankers wishing to prosecute the executants of such trust receipts. According to the court's verdict the banker cannot claim any amount from the borrower, without proving actual loss to the bank, or likelihood of loss arising from the borrower's fraud. The present writer highly commends the suggestion made by the Indian Central Banking Enquiry Committee (1931) in para. 565 of their report that, "the legal position as regards this matter may be investigated by the legal advisers of Government and such action taken as may be considered necessary."

RECENT DECISIONS OF CALCUTTA HIGH COURT—There are three comparatively recent decisions of the Calcutta High Court on the question of trust receipts which require critical examination. The first case is that of

In re Nripendra Kumar Bose, I.L.R. 56 Cal. 1074. There the sellers delivered certain goods to the buyers who executed a trust receipt in favour of the sellers. It was held that the transaction was an attempt to defeat the provisions of section 52 (*c*) (i) of the Presidency Towns Insolvency Act and also to secure a preference over all creditors and therefore illegal; it was held further, that upon the insolvency of the buyers, the goods vested in the Official Assignee. In the subsequent case, *In re Summermull Singana,* I.L.R. 59 Cal. 818, the facts were identical and the decision was the same.

The case which is of importance to bankers is the last of the series, namely, *The Chartered Bank of India* v. *The Imperial Bank,* I.L.R. 60 Cal. 1262. In order to appreciate the points there raised and decided, it will be necessary in some detail to deal with the facts, which, were as follows: A firm *T* carried on business as importers and dealers in India; its shippers drew bills of exchange on *T* for the price of the goods shipped. The Central Bank (the plaintiffs in the suit) financed the shippers by discounting the bills and taking as security the bills of lading and other documents relating to the goods. The terms of the contract of sale between the shippers and *T* as to payment were D/P (documents against payment) and consequently *T* could not obtain the documents from the Chartered Bank without payment of the bills. The Chartered Bank, however, delivered the documents to *T* on its signing the usual trust receipts in favour of the Chartered Bank. Firm *T* then pledged the documents to secure a loan from the Imperial Bank of India (the defendants). The firm subsequently became insolvent. It was held that whatever might be the legal relationship created between the Chartered Bank and firm *T* constituted by the trust receipts, they could not affect the Imperial Bank of India who were *bona fide* pledgees for value without notice. It was further held that the importers were not the legal owners and hence there could be no trust of which they could be trustees. Following the two previous cases it was also decided that the trust, if any, was void as the real object was to defeat the provisions of section 52 (*c*) of the Presidency Towns Insolvency Act, 1909. It was lastly held that the delivery of the documents by the Chartered Bank to firm *T* brought the case within the doctrine of reputed ownership and the goods vested in the Official Assignee subject to the pledge in favour of the Imperial Bank. This judgment proceeds upon the arguments advanced by the parties and the Chartered Bank invited trouble by contending that the importers were trustees for them. It is difficult to understand how such a contention could be of any assistance to the Bank because, even on the assumption that the importers were trustees, the pledge created in favour of the Imperial Bank being a legal pledge, would certainly prevail over the equitable title of the Chartered Bank. The only argument which might have been of any help to the Chartered Bank was one based on the judgment of the House of Lords in *North Western Bank* v. *Poynter,* [1895] A. C. 56 which singularly enough was not cited in the arguments referred to in the judgment. The facts of that case were that certain traders pledged a bill of lading with the plaintiff bank to secure a loan. The Bank returned the bill to the pledgors under an agreement—virtually a trust receipt—whereby the pledgors were to obtain delivery of the merchandise, sell them on behalf of the bank and account for the proceeds towards satisfaction of the debt. It was held that the pledge was not determined as the bill of lading was only handed over for a limited purpose only to the traders and the plaintiff bank was entitled to the proceeds of the cargo as against the general creditors of the pledgors. The only distinction between the above two cases is that in the case of the *Chartered Bank* v. *Imperial Bank* the shippers and not the im-

porters were the pledgors of the documents. On this distinction it could be argued that no events had happened to entitle the Chartered Bank to sell as pledgees and they could not, therefore, be deemed to hand over the documents to the importers for the limited purpose of selling the goods on their behalf. But if the Chartered Bank had no right to sell, the only party entitled to complain were the pledgors, *i.e.*, the shippers, who could at any stage ratify the unauthorized acts of the Chartered Bank. In any event it was a matter that did not concern the Imperial Bank at all. It might secondly be argued that, on the assumption that the importers were given possession of the goods for the special purpose of sale, nevertheless they became mercantile agents in possession of the goods and could therefrom create a valid pledge under section 178 of the Indian Contract Act, 1872. This point was not even raised in the House of Lords decision and it is doubtful whether the importers could be considered as mercantile agents in the circumstances of the case. Neither is any argument possible which is based on section 30 of the Indian Sale of Goods Act, 1930 because the Chartered Bank were not the vendors of the goods and therefore, the importers were not buyers in possession with the consent of their sellers; the sellers in the case were the shippers. Finally, as to the doctrine of "reputed ownership," not only is the view contrary to the judgment of the House of Lords, but is inconsistent with the recent Privy Council decision in *Mercantile Bank of India* v. *Central Bank*, 65 I.A. 75. The legal position as to trust receipts, however, will continue to be regulated by the Calcutta decisions until reversed by the Privy Council and consequently from the banker's point of view trust receipts may be considered valueless.

MISCELLANEOUS SECURITIES

Lands and Buildings.

The functions of a commercial bank are not those of a building society. Consequently, bankers do not generally advance moneys against real property, or securities relating thereto. We, therefore, do not propose to devote much space to this subject. Moreover, the law relating to the mortgage of immovable properties, is far more complicated than the laws which govern other classes of securities against which bankers usually make advances. The amount of funds lent by commercial banks against such securities is comparatively small because lands and buildings, as securities for loans, do not appeal to them for the following reasons :—

Unpopularity of Real Estate with Bankers as Security.

LEGAL HINDRANCES—Where there are no legal or customary hindrances to the transfer of property, it will form a sound and valid security. But in cases where legal enactments place some checks on such transfers, several complications spring up in connection with the banker's advances to his customer. For example, the Punjab Land Alienation Act is a great hindrance to the transfer of land in that province, as it does not permit a non-agriculturist to acquire agricultural land from an agriculturist. Again, Hindu as well as Mohammedan laws and customs relating to succession and transfer of property, put serious obstacles in the way of the banker providing financial accommodation on the security of what is ordinarily considered to be a normal and sound security.

HEAVY EXPENSES OF LEGAL MORTGAGES—Before getting accommodation against real property, the customer has to incur heavy expenses in mortgaging the property. If the customer is unable to meet them, he will have to borrow more money, which is likely to weaken his financial position.

FRIGID NATURE OF THE SECURITY—The ideal, a commercial bank pursues, is to cover its advances with securities which are easily realizable. Lands and buildings being difficult to realize, it is not in the interest of a bank to leave its moneys locked up for a long time. Particularly commercial banks, whose liabilities are chiefly in the form of deposits payable either on demand or at short notice, cannot afford to have their assets frozen by advances for long periods.

DIFFICULTIES IN SATISFYING ONESELF REGARDING A CUSTOMER'S TITLE—Another serious drawback in the case of such securities, is the difficulty of finding out, whether or not, the person offering the security has a good legal title to the same, as the law on the subject is so complicated, that only highly trained lawyers can certify, whether or not, the title of a person to an immovable property is good. Further, before a lawyer can certify as to the title being good, he has to peruse carefully all the title-deeds and also, in order to find out whether there are any existing encumbrances against the immovable property proposed to be mortgaged, to refer to the office of the district or sub-registrar of assurances, as the case may be, where all documents purporting to deal with immovable

properties are registered. A search has also to be made in the office of the sheriff, if the property proposed to be mortgaged is in the Presidency towns, and in Courts if it is situated in other places, with the purpose of ascertaining whether there is any existing attachment or other order of the Court, whereby the property proposed to be given as security is already encumbered. All this is necessary for all prior encumbrances or burdens on the property proposed to be mortgaged, of which the banker has actual notice or ought to have notice as a result of proper search conducted as indicated above, have priority over any further charge on the said property. Moreover, a person who is in possession of the title-deeds of an immovable property, may not be the absolute owner of the same, as, for instance, he may be holding the title-deeds in some right other than that of an absolute owner, such as for example, a mortgagee. If he is a mortgagee, his right to mortgage the property is limited to the extent of the amount advanced by him plus the interest due thereon.

VARIETY OF LAND TENURES —Further, the banker should take into consideration certain incidents which go with the land. As for example there are various tenures such as *Freehold*, *Fazandari*, *Sanadi*, *Khoti*, *Inami*, *Toka*, etc., under which the land in the Bombay Presidency falls. Similarly in the provinces of Madras, Bengal and the Punjab, there are respectively, the *Ryotwari*, *Zamindari* and *Palidari* tenure. These different tenures have different incidents attached to them and consequently the value of land varies according to the tenure under which it is held. In short, the subject of mortgage of immovable properties is a highly technical and complicated one and a banker cannot always advance moneys on the security of an immovable property safely, without obtaining expert legal advice.

DIFFICULTY IN VALUATION—Another difficulty in such cases, arises in connection with the difficulty of valuation of the properties, for the banker can only advance money to a person after keeping a safe margin for the fluctuations in the price of land and building, the depreciation of the building, as well as several other factors. In this matter, the banker cannot rely upon his own judgment, but has to depend on the valuation reports of expert surveyors, architects and engineers.

No doubt the cost of the property may be very high, but it may not fetch anything like that in the open market when offered for sale. It may so happen that the owner, in satisfying his own requirements and taste, has incurred additional expenditure, which does not add materially to the value of the property for the purposes of ordinary tenancy. The situation or locality may, on occasions, affect substantially the value of the property; for example, a palatial building in an out-of-the-way village. Then, the value may depend on the presence of some particular institution or undertaking in the locality, which may not be of a permanent nature.

DELAY IN REALIZATION OF THE SECURITY- Another drawback of such securities is that, in case the mortgagor fails to repay the amount due from him, the banker has to undergo several formalities before the sale of the mortgage property can be completed. Consequently he has to wait for several months and occasionally years, before it is possible for him to get back his moneys.

TO PAY COSTS OF REPAIRS AND FIND TENANTS—Although, at the time of granting accommodation against lands and buildings, the banker expects to get some rent by letting the property during the currency of the loan he

has to pay the costs of repairs to keep the property in a lettable condition. Moreover, he will also have to take the trouble of finding suitable tenants, and collect rents, unless he is able to entrust this work to competent estate agents.

CONCLUSION.—For reasons stated above, it will be seen that making of advances on the security of immovable properties, is not the kind of business popular with commercial banks, inasmuch as they have to rely, not on their own judgment, but largely upon that of others, both as regards the valuation of the immovable property offered as security as well as the title of the person proposing to mortgage the same.

Mortgages.

DEFINITION.—A mortgage is defined by section 58 of the Transfer of Property Act, 1882 as "the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability." The essential feature of mortgage is the transfer of an interest in specific immovable property, for the purpose of securing a debt or obligation. If the transfer is made for any other purpose, such as the discharge of a debt, it cannot be called a mortgage. Moreover, the immovable property to be mortgaged must be specific, that is, it should be such as can be clearly described. It may also be added that the term immovable property referred to above, does not include grass, crop or standing timber.

LEGAL MORTGAGE.—A legal mortgage (see Appendix A, Form No. 33, *post*), defined by Mr. H. P. Sheldon in his Practice and Law of Banking, p. 368, as "the transfer by deed of the legal estate in land, subject to the mortgagor's rights, as a security for the payment of money due, or to become due, to the person who takes the security." In the case of a legal mortgage, the transfer of the legal rights to the persons to whom the security is given is essential. In other words, the legal title to the property is transferred, subject to the mortgagor's right of redemption that is, the right to have the property reconveyed, on the payment of the loan together with the interest and charges incurred by the mortgagee in protecting, preserving, or enforcing his security.

EQUITABLE MORTGAGE.—When a loan of money is secured by the deposit of title-deeds (see Appendix A, Form Nos. 33 (*a*) and 33 (*b*), *post*), it is known as an equitable mortgage, because, in such a case no legal transfer of property takes place. In *Foster* v. *Barnard* (1916), 2 A.C. 160. Lord Haldane said, "The deposit of title-deeds with bankers makes the bankers mortgagees in the eye of Equity." Under English law such a mortgage gives the mortgagee no rights against the property, but only a personal right against its owner. Thus, it will be seen that the essential requirements of an equitable mortgagee are :—(1) The debt; (2) the deposit of title-deeds of the property to be mortgaged, and (3) the intention of giving the mortgagee a security. In British Indian, such mortgage is recognized by law, and is called mortgage by deposit of title-deeds.

RESTRICTED TO PRESIDENCY TOWNS AND CERTAIN OTHER CITIES—Considering the fact that the law of mortgages of immovable properties is very complicated and technical, the Indian legislature by section 58 (*f*) of the Transfer of Property Act, 1882 has for the purpose of facilitating quick loans in urgent cases, further enacted that, in the towns of Calcutta, Madras,

Bombay, Karachi, Rangoon, Moulmein, Bassein and Akyab and in any other town* which the Governor General in Council may by notification in the Gazette of India specify, an equitable mortgage of his immovable property, may be created by a person, by delivering to his creditor or his agent, documents of title to such immovable property, with the intention to create a security thereon. While it is true that there is good reason for limiting this facility to large cities where people are not illiterate and ignorant, it is submitted that, as recommended by the Central Banking Enquiry Committee (1931) in para. 563 of their report, the above provision should be gradually extended to other commercial towns.

ADVANTAGES OF EQUITABLE MORTGAGES—Equitable mortgages are ordinarily preferred to legal mortgages. *Firstly*, on the ground of the saving in time and trouble. If a customer of a bank urgently wants an advance against his immovable property and can satisfy the bank authorities as to his title and valuation of the property, the money may be advanced to him without any delay, as an equitable mortgage need neither be in writing nor need it be registered. *Secondly*, legal mortgages are liable to fairly heavy stamp duties and, therefore, the expenses of executing a legal mortgage are saved if the money is advanced against the deposit of title-deeds. *Thirdly*, the mortgagor's credit is likely to suffer if he gives a legal mortgage, as not only the witnesses who sign the legal mortgage deed but also those through whose hands the deed passes for registration, will come to know of the mortgage. In fact, anybody may read its contents on payment of a nominal fee to the registration office.

DRAWBACKS OF EQUITABLE MORTGAGES—As against the points in favour of equitable mortgages given above, it must be stated that the equitable mortgagee in England runs the risk of his title being defeated by one with a legal title or a prior equitable title. However, if the title deeds of the property mortgaged are not parted with by the banker and if the customer's character is known to be above suspicion, the risk is not a material one. There is also the further disadvantage of a delay in realizing the security, as the equitable mortgagee has no right to sell the property without an order of a court of law.

Rights of equitable mortgagee and subsequent legal mortgagee.

In England, a subsequent legal mortgagee is entitled to priority over a prior equitable mortgagee, unless the subsequent legal mortgagee can be displaced by proof of notice of the prior equitable mortgage. But a prior equitable mortgagee would acquire a better title, that is, would be entitled to priority over a subsequent legal mortgagee who *has* notice of the prior equitable mortgage. A person cannot claim priority by reason merely of the registration of his deed, if he takes the mortgage with notice of an unregistered transfer. The position is different in India as the Transfer of Property Act recognizes such mortgages as equivalent to simple mortgages (section 96) but restricts their operation to certain centres of commerce as stated above. This has been done for the convenience of the mercantile community to enable them to borrow money without the delay incident to investigations of title and the publicity of registration. The Privy Council in *Imperial Bank*

*The following towns have been specified by the Governor General in Conucil by notifications in the Gazette of India :—

Bandra, Kurla, Ghatkoper-Kirol, Chittagong, Dacca, Narayanganj, Cawnpore, Allahabad, Lucknow, Coimbatore, Madura, Cocanada, British Cochin, Agra and Ahmedabad. (*See* Transfer of Property Act, 1st Edn., by Chitale.)

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of India v. *U. Rai*, 50 I.A. 283, held that for purposes of priority, an equitable mortgage by deposit of title-deeds stood on the same footing as a mortgage by deed. There is now added a similar proviso to section 48 of the Indian Registration Act, 1908. The limitations to the towns named has nothing to do with the location of the property but has reference only to the place where the deeds are delivered. If a person delivers to a bank in Bombay, title-deeds of his property situated in Nasik a valid equitable mortgage will be created (*Central Bank of India* v. *Nusserwanji*, 57 Bom. 234). A deposit of deeds outside the specified towns will create neither a mortgage nor a charge (*Kanchadi* v. *Shiva*, 28 Mad. 54). If *A* deposits with a bank in Thana or Poona, title-deeds of his property situated in Bombay, the deposit will have no effect in law so far as the property is concerned. A mortgage by deposit of title deeds does not require any writing. If it is accompanied by a memorandum, as is usually the case, it must be registered (*Pranjivandas* v. *Chan Ma*, 43 I.A. 122).

Bankers should guard against negligent dealing with title deeds deposited with them, because negligence might lead to their mortgage being postponed to a subsequent mortgage. Section 78 of the Transfer of Property Act provides that:—

> Where, through fraud, misrepresentation or gross neglect of a prior mortgagee, another person has been induced to advance money on the security of the mortgaged property, the prior mortgagee shall be postponed to the subsequent mortgagee.

A case which arose in India and where two banks were concerned, will illustrate the point (*Lloyd's Bank* v. *P. E. Guzder & Co.*, I. L. R. 56 Cal. 868). Guzder and Company had dealings with the National Bank of India for a long time and had an overdraft account with them, to secure which title deeds of certain properties were deposited with the National Bank. Guzder & Co. also had an overdraft account with Lloyd's Bank. One of the partners of Guzder & Co. asked the National Bank for a return of the title deeds, falsely representing that he desired to sell the property and clear the overdraft. The usual practice in such a case is for the prospective purchaser to inspect the deeds in the office of the bank's solicitors. The partner, however, stated that the property would not fetch a good price if the intending buyer came to know of the bank's mortgage and consequently the manager handed over the title deeds to the partner, who on the same day deposited the deeds with Lloyd's Bank, obtaining a further accommodation of five lakhs. It was held that the mortgage of the National Bank was postponed to that of Lloyd's Bank because of the bank manager's negligence in handing over the needs to the mortgagor.

In the event of such advances, made under a mortgage securing future advances, the mortgagee can claim priority over a subsequent mortgagee with notice of the prior mortgage. By section 79 of the Transfer of Property Act, 1882.

> If a mortgage made to secure future advances, the performance of an engagement or the balance of a running account, expresses the maximum to be secured thereby, a subsequent mortgage of the same property shall, if made with notice of the prior mortgage, be postponed to the prior mortgage in respect of all advances or debits not exceeding the maximum, though made or allowed with notice of the subsequent mortgage.

Thus, *A* mortgages his house to his bankers B. & Co., to secure the balance of his account with them to the extent of Rs. 10,000. *A* then mortgages the same house to *C* to secure Rs. 10,000, *C* having notice of the mortgage to B. & Co., and *C* giving notice to B. & Co. of the second mortgage. On the date of the second mortgage, the balance due to B. & Co., does not exceed

Rs. 5,000. B. & Co. subsequently advance to *A* sums making the balance of the account against him exceed the sum of Rs. 10,000. B. & Co. are entitled to priority over *C* to the extent of Rs. 10,000.

CLASSIFICATION OF LEGAL MORTGAGES UNDER INDIAN LAW—The following are the different types of legal mortgages allowed by Indian law under section 58 of the Transfer of Property Act, 1882 as amended by the Transfer of Property Amendment Act of 1929:—

Simple mortgage. Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage and the mortgagee a simple mortgagee.

Mortgage by conditional sale. Where the mortgagor ostensibly sells the mortgaged property on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute or on condition that on such payment being made the sale shall become void, or on condition that on such payment being made the buyer shall transfer the property to the seller, the transaction is called a mortgage by conditional sale and the mortgagee a mortgagee by conditional sale;

Provided that no such transaction shall be deemed to be a mortgage, unless the condition is embodied in the document which effects or purports to effect the sale.

A mortgage by conditional sale should be distinguished from a mere conditional sale, in which case the sale is complete with a condition superimposed that, if the vendor repays the amount of the sale price within a certain time, the sale would be cancelled.

Usufructuary mortgage. Where the mortgagor delivers possession or expressly or by implication binds himself to deliver possession of the mortgaged property to the mortgagee, and authorizes him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property or any part of such rents and profits and to appropriate the same in lieu of interest, or in payment of the mortgage-money, or partly in lieu of interest or partly in payment of the mortgage-money, the transaction is called an usufructuary mortgage and the mortgagee an usufructuary mortgagee.

English mortgage. Where the mortgagor binds himself to repay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a proviso that he will re-transfer it to the mortgagor upon payment of the mortgage-money as agreed, the transaction is called an English mortgage.

Mortgage by deposit of title-deeds. Where a person in any of the following towns, namely, the towns of Calcutta, Madras, Bombay and Karachi, and in any other town which the Provincial Government concerned may, by notification in the Official Gazette, specify in this behalf, delivers to a creditor or his agent documents of title to immovable property, with intent to create a security thereon the transaction is called a mortgage by deposit of title-deeds.

From a study of the different kinds of mortgages defined above, together with the provisions contained in section 67 of the Transfer of Property Act, 1882 (IV of 1882) the reader will see that the different kinds of mortgages confer different rights on the mortgagee for the realization of the amount advanced by him.

RIGHTS OF MORTGAGEES UNDER DIFFERENT TYPES OF MORTGAGES—The simple mortgage comprises two contracts: (1) a personal obligation on the part of the mortgagor to pay the debt, and (2) a contract empowering the

mortgagee to realize his money by selling the security with the leave of the court. A simple mortgage does not confer, on the mortgagee, the power of sale and, therefore, he must sell it through a court of law. In the mortgage by conditional sale there is an ostensible sale of the property with a right, to redeem the property, reserved to the mortgagor under certain conditions. He can only sue for foreclosure and not for sale. In a usufructuary mortgage, the delivery of possession of the property to the mortgagee is a *sine qua non* and the possession is so delivered with the object that the usufruct of the property may be utilized by the mortgagee, (*a*) in lieu of interest, (*b*) in payment of the principal, or (*c*) partly in payment of the principal and partly in payment of the interest. A usufructuary mortgagee as such can neither sue for foreclosure nor for sale, nor is a usufructuary mortgagor personally liable to repay the loan, the essence of a usufructuary mortgage being that the mortgagee looks to the rents and profits for the satisfaction of his advance. The three essentials of an English mortgage are as follows:—(1) That the mortgagor should bind himself to repay the mortgage-money on a certain day, (2) that the property mortgaged should be transferred absolutely to the mortgagee, (3) that such absolute transfer should be made subject to a proviso that the mortgagee will reconvey the property to the mortgagor, upon payment by him of the mortgage-money on the day on which the mortgagor binds himself to pay the same. An English mortgagee can only sue for sale and not for foreclosure. The rights of a mortgagee by deposit of title deeds are the same as those of a simple mortgagee.

INSURANCE OF BUILDINGS TO BE MORTGAGED—When the property to be mortgaged is a building, irrespective of the fact whether the mortgage is equitable or legal, the banker should see that the property must be insured against fire with a reliable insurance company and the policy assigned to the banker advancing the money.

RIGHT OF SALE WITHOUT INTERVENTION OF THE COURT—A mortgagee has power to sell the mortgaged property in default of payment of the mortgage-money, without the intervention of the court in the following cases and in no others:—

(1) When the mortgage is an English mortgage, and neither party is Hindu, Mohammedan or Buddhist;

(2) When a power of sale, without the intervention of the court, is expressly conferred on the mortgagee by the mortgage-deed and the mortgagee is the Crown;

(3) When a power of sale, without the intervention of the court, is expressly conferred on the mortgagee by the mortgage-deed and the mortgaged property or any part thereof was, on the date of the execution of the mortgage-deed, situate within the towns of Calcutta, Madras, Bombay, Karachi, or in any other town or area which the Provincial Government may by notification in the Official Gazette specify in this behalf.

As an equitable mortgagee by deposit of title-deeds by virtue of section 96 of the Transfer of Property Act, 1882 stands on the same footing as a simple mortgagee, the only remedy of the mortgagee is to have the property sold by and under the orders of the court.

NOTICE OF SALE—The power to sell, without the intervention of the court, should be exercised after a notice in writing requiring payment of the

principal money has been served on the mortgagor, and default has been made in the payment of the principal money for three months after such service; or when the interest under the mortgage, amounting to at least Rs. 500/-, is in arrears, having remained unpaid for three months after becoming due.

REGISTRATION WHEN NECESSARY—In all the above cases of legal mortgages, whenever the principal money secured is more than one hundred rupees, a valid and legal mortgage can only be effected by registered instrument, signed by the mortgagor and attested by at least two witnesses. When dealing with registered companies it is necessary that mortgages and charges other than those on stocks and shares, on bills of lading, warrants and similar documents pertaining to goods; on life policies, and on negotiable instruments, should be registered within twenty-one days after their execution.

"TACKING"—Another principle regarding mortgages of immovable property which is of considerable practical importance to bankers is the one based on the doctrine of "tacking." We have seen that as a general rule the priority of successive mortgages is governed by the order of time. In England, however, a third mortgagee formerly could gain priority over a second mortgagee by paying off the first mortgagee and "tacking" his third mortgage on to the first mortgage. This resulted in the squeezing out of the second mortgagee who could only redeem by paying off the first and third mortgage. The doctrine of "tacking" has long since been abolished in England and India but the principle still survives in a modified form in both countries. By section 79 of the Transfer of Property Act, if a mortgage has been created to secure present and future advances or the balance due on a general account and the maximum sum intended to be secured is expressed in the instrument, the first mortgagee is entitled to tack on future advances made after the date of a second mortgage created over the same property, provided that the second mortgagee had notice of the first mortgage. This principle is exactly the reverse of the rule laid down in England in *Hopkinson* v. *Rolte* (1861), 9 H.L.C. 514, whereby the first mortgagee is not entitled to tack after he receives notice of the second mortgage. The case of *Deiley* v. *Lloyd's Bank*, [1912] A.C. 756, illustrates this distinction. A customer of Lloyd's Bank executed a mortgage of immovable property to secure present and future advances to be made to him by the bank. The customer created a second mortgage of the same property and the second mortgagee gave notice to the bank. The bank's regulation required that in such a case the overdraft account should be closed and a new account of the customer be opened. Through an oversight this precaution was not adopted and the one continuous account was maintained even after notice of second mortgage. The result was that by the operation of the rule in *Clayton's case* all the subsequent payments made by the customer were appropriated to the discharge of the amount due to the bank at the date of the notice of the second mortgage and by the operation of the rule in *Hopkinson* v. *Rolte* the second mortgagee obtained priority over the bank.

For a detailed and further consideration of the law of mortgages of immovable properties in India, the student is referred to Chapter IV, sections 58 to 104 of the Transfer of Property Act, 1882.

Life Policies.

DEFINITION—A life policy is a contract which is entered into between a certain person and an insurance company, by which the latter, in return

for either a lump sum payment at the time of the contract, or on payment of premia for a fixed number of years, or throughout the life of the insured, undertakes to pay a certain sum, with or without profits, either on his death or on his attaining a certain age. When the amount is payable on death, the policy is known as a whole life policy, but, when the payment is to be made either on the death of or on the attainment of a certain age by the insured whichever event may happen earlier, the policy is called an endowment policy. The premia may be made payable throughout life, or only for a fixed number of years: the latter form is preferable, in the case of persons who are in Government or other service, the rules of which require a person to retire on reaching the age of fifty-five or in some cases sixty years.

Reasons for Unpopularity of Life Policies as Securities.

"A banker should never make any advances upon the life policies."[1]

Life policies have not been very popular with bankers, as covers for their advances, for the following reasons:—

EVASION BY INSURER FOR NON-DISCLOSURE OF A MATERIAL FACT—A contract of life insurance is a contract *uberrimæ fidei*, requiring the utmost good faith on the part of the assured, who is bound to make full disclosure of all material facts within his knowledge, concerning his life. If there is any concealment of a material fact known to the assured, it is sufficient to enable the insurance company to avoid its liability on the policy. A banker has no means of knowing whether the assured has disclosed all the material facts concerning his life, and if the assured has been guilty of fraud or misrepresentation, the banker stands the risk of losing his money. The Insurance Act, 1938, by section 45, provides that no insurance policy shall be disputed after it has been in force for two years from the date of effecting the policy on the ground of any misrepresentation even as to a material fact, except where the misrepresentation alleged to have been made as to a material fact was knowingly made by the insured in order to defraud the insurance company.

REGULAR PAYMENT OF PREMIA REQUIRED TO KEEP POLICY ALIVE.—Unless the life policy has been in existence for some years and its surrender value is sufficient to cover the advance made by the banker, he has to keep the policy alive in the event of non-payment of premia by the assured. The surrender value of a policy depends upon the class to which it belongs and the number of years it has been in force. In these days, in case of failure to pay the premia, some companies offer to exchange the policy for a paid-up one for a smaller amount. Policies, having the non-forfeiture clause, do not lapse with the default in the payment of premia, but stand over for some period thereafter. The general practice is, however, to make the policies non-forfeitable, if payments cease to be made after a policy has been in force for a certain number of years, usually two or three. Under this system, the company agrees to keep the policy alive by automatically making an advance to meet the premiums as they fall due, so long as the surrender value of the policy will cover the advance. The advances thus made are accumulated at usually from 6 to 9 per cent. interest, and are in the nature of a first charge on the policy. In the event of failure on the part of the assured to clear the advances so made to keep the policy alive, the policy becomes forfeited to the company on the exhaustion of the surrender value. The Insurance Act, 1938 provides, however, that, in case, premiums cease to

[1] (*The Logic of Banking*, by J. W. Gilbert.)

be paid after a policy has been in force for two years, and the arrear in payment has stood over for three months, the insurer shall serve a notice on the policy-holder stating the amount, if any, which is required to be paid by him in order to convert the policy into a paid-up one. The ideal security of this class is a paid-up participating policy, in as much as its value goes on increasing with the addition of bonus, without any liability as to the payment of future premia. If, however, the policy is not a paid-up one, the banker must ascertain and satisfy himself that the premia have been paid up-to-date and the future premia will be paid to the assurance company, as and when they fall due. In case the banker has to provide money for the payment of any future premium, the banker will treat it as a loan to the assured, his customer, and the banker will have the satisfaction of keeping the security alive. In making an advance against a life policy, the banker should get the customer to covenant with him that he will at all times punctually pay the premia and all other moneys which may become payable to the assurance company in respect of the policy and deliver to him, the banker, receipt for each payment of premium at least fourteen days before the expiration of the days of grace allowed for the payment of the same. Insurance Companies in India generally allowed fifteen days of grace for premia payable monthly, and, thirty days in the case of quarterly, half-yearly and annual premia. Also, should the customer default and the banker elect to pay the premium due, the customer's account shall be debited with the amount of it and all premiums so paid shall be a charge upon the policy.

UNSATISFACTORY NATURE OF LAW RELATING TO ASSIGNMENTS—Bankers in India do not favour life policies as security for advances also because of the unsatisfactory state of law relating to the question of assignments. In England, if the banker taking a life policy as security for his advance has the policy assigned to him, his position is safe provided the insurance company has received no intimiation of a prior charge; unfortunately for bankers in India priority is governed not by the date of the registration of the assignment but by the actual date of the assignment. It is therefore necessary that the borrower should be asked to give a letter stating that no previous assignment of the policy exists.

ABSENCE OF MANY FIRST CLASS LIFE OFFICES—Another reason for the unpopularity of life policies as good security was the fact that, uptil about seventy years ago, there were few first class life assurance companies, which is not the case to-day. There are to-day many good Indian companies doing life business in India and they offer to issue a variety of policies to meet different needs and conditions.

RISK IN CASE OF SUICIDE—Formerly, the liability under a contract of life assurance was invariably avoided in the event of the assured committing suicide or in the case of his death by the hand of justice; the security became useless upon the happening of such an event. Although, in modern times, restrictions of this nature have been modified the banker has yet to be very careful about the wording of the clause relating to the same. "One Rowett had obtained large advances from his company, and to meet the position, the company had taken out with the assurance company, three policies for £10,000 each on Rowett's life. Each of the policies contained a clause, 'That the life assured shall not within six calendar months from the date of the policy commit suicide, but such suicide shall not affect the interests of *bona fide* onerous holders.' Rowett committed suicide within six months of the assurances being effected. The plaintiff company sought to recover the

£30,000 under the policies, while the assurance company claimed that they were not liable, because Rowett had committed suicide within the period of six months and the plaintiff company were not *'bona fide* onerous holders'. The court gave judgment for the assurance company. The case was then taken to the Court of Appeal, which confirmed the decision of the lower court. From a perusal of the judgment (*Rowett Leaky & Co. Ltd.*, v. *Scottish Provident Institution*), (Bankers and Insurance Managers' and Agents' Magazine, June, 1926, pp. 887, 888). It would appear that the plaintiff company failed in the opinion of the Lords of Appeal to substantiate their claim against the assurance company, not because of the phrase "*bona fide* onerous holders," which, it had been stated in the lower court had no meaning at all in English law, but because the plaintiff company were not *bona fide* holders. "They were, in fact, the assured, one of the original parties to the contract." It thus seems clear that the "suicide" clause affects the original parties, but not *bona fide* holders for value. Companies generally make it a condition that the notice of assignment should be received by them at least a month previous to the date of suicide. It cannot be too well impressed upon the banker that he should give notice to the company as soon as possible, after an assignment of a life policy in his favour has been made, and obtain an acknowledgment therefor. Express provision has been made in the Insurance Act, 1938, that a transfer or assignment of a life policy, whether with or without consideration, must be in writing, either indorsed upon the policy itself or by separate document, signed by the transferor or his agent duly authorized in this behalf and attested by at least one witness; in order that the transfer or assignment be operative against the insurer, notice in writing of the assignment or transfer shall have been delivered to the insurer at his principal place of business in India. The notice may be given by the transferor or the transferee, and the insurer is bound to record in his books such notice when served upon him and give an acknowledgment of the notice to the sender for a fee of one rupee. From the date of receipt of such notice, the insurer will treat the assignee or the transferee as the only person entitled to the benefits under the policy.

POLICIES TAKEN FOR THE BENEFIT OF FAMILY—A life policy is usually taken out by the assured for the express provision of his wife and children in which case the policy will not be available to the banker as security, as children under age cannot assign. If, however, the policy is taken by the husband for the benefit of his wife alone, the policy will become available, if both sign the assignment.

ABSENCE OF INSURABLE INTEREST—Any person may effect an insurance, provided he has an insurable interest in the life or property he wishes to insure. Absence of insurable interest will render the policy void. The Life Assurance Act, commonly called the Gambling Act (The Life Assurance Act, 1774 (14 Geo. 3, c. 48), sections 2, 3), makes the existence of insurable interest necessary for a contract of insurance. It lays down that:

> No insurance shall be made by any person or persons, bodies politic or corporate, on the life or lives of any person or persons, or on any other event or events whatsoever, wherein the person or persons for whose use, benefit or on whose account such policy or policies shall be made, shall have no interest, or by way of gaming or wagering; and every assurance made contrary to the true intend and meaning hereof, shall be *null* and *void* to all intents and purposes whatsoever.

It further enacts;—

> In all cases where the insured hath an interest in such life or lives, event or

events, no greater sum shall be recovered or received from the insurer or insurers than the amount or value of the interest of the insured in such life or lives, or other event or events. "

INSURABLE INTEREST EXPLAINED—What is insurable interest is not easy to define. "It is clear that the assured must have an interest whatever we understand by that term. In order to distinguish the intermediate thing between a strict right or a right derived under a contract and a mere expectation or hope which has been termed an insurable interest, it has been said in many cases to be that which amounts to a moral certainty. I have in vain, however, endeavoured to find a fit definition for that which is between a certainty and an expectation, nor am I able to point out what is an interest unless it be a right in the property or a right derivable out of some contract about the property insured, which in either case may be lost upon some contingency affecting the possession or enjoyment of the party. Expectation, though founded upon the highest probability, is not interest, and it is equally not interest whatever might have been the chances in favour of the expectation." His Lordship continued to say, "Considering the caution with which the legislature has provided against gambling by insurance upon fanciful property, it is certainly desirable that no purely sentimental interest, such as an expectation or an anxiety, should be made the ground of a policy" (*Glasgow Parish Council* v. *Martin* (1910) S.C. (J.) 102). In the light of these observations by Lord Eldon, it may be observed that insurable interest is a certain pecuniary interest in the life of the person or thing insured. The insured must stand in such relations with the subject matter of insurance that in the event of its loss, he will sustain some pecuniary loss. It is essential that the interest should exist at the time the insurance is effected.

WHO CAN HAVE INSURABLE INTEREST ?—Having seen what is insurable interest, we will proceed to consider the question as to who can effect assurance. A person is considered to have sufficient insurable interest in his own life to entitle him to recover whatever sum he may have insured for. A wife may insure, and is presumed to have an insurable interest in the life of her husband. In the same way, a husband is presumed to have such an interest in the life of his wife. A parent has not, by virtue of the relationship only, an insurable interest in the life of a child. If a parent is absolutely dependent for his livelihood upon his son or daughter, it is presumed that the parent has an insurable interest in such son or daughter. A son has an insurable interest in the life of a father who supports him, but not in the life of a father dependent on him for support. A surety has an insurable interest in the life of his co-surety to the extent of the portion of liability for the debt, and so also in the life of his principal debtor. A creditor has an insurable interest both in the life of his debtor and that of any surety for the debt. The limit of the creditor's insurable interest is the amount of the debt together with interest and any incidental charges due to him at the time when the policy matures. A partner has an insurable interest in the life of his co-partner to the extent of his interest in the partnership.

CREDITOR'S INSURABLE INTEREST—Where the policy is obtained by a third party, not being a creditor or a guarantor, the policy is void, unless the third party has an insurable interest of a pecuniary nature in the life of the insured. A guarantor as well as a creditor has an insurable interest in the life of the debtor to the extent, as has been said, of the loan made or guaranteed. Interest must exist at the time the policy is taken out, although at its maturity it may cease to exist. In such a case, the creditor or guarantor can

recover the amount of the policy from the company, even though the debt has been extinguished, when it is usual to regard such creditor or guarantor as trustee for the debtor in respect of the amount. It is not uncommon with bankers to take out policies on the lives of customers indebted to them. In general practice, however, the policy is effected by the debtor himself and then deposited as security with the banker.

Redeeming features of life policies as security—Notwithstanding the drawbacks, life policies are nevertheless accepted by bankers as collateral security for advances. If the policy given as security is that of a company of standing, the advantage is that, with the advent of time, it increases in value and when it matures by death as in the case of a whole life policy or by the expiration of a fixed term of years or by previous death as in the case, of an endowment policy, the full sum assured together with bonuses, if any becomes immediately available. Not infrequently, the payment received from the assurance company more than wipes off an overdraft. Moreover, it is a liquid and convertible security, at least to the extent of the surrender value of the policy, and the banker always reserves to himself the right to surrender or otherwise convert it into cash. Particularly in the case of loans granted to parties who have fixed incomes terminable at death, the obtaining of such a security is a precaution which should not be ignored by any banker. Similarly, when a banker decides upon an advance to a partnership firm, the continued success of which is largely dependent upon the life of one of the partners, it is desirable not merely as a safeguard to the banker, but in the interests of the other partners also, to receive as security a policy on the life of that partner, especially when no other good security is forthcoming.

Precautions.

The following *precautions* should be taken by bankers, while accepting life policies as covers for advances :—

Status of the Insurance Company—The banker should first satisfy himself regarding the financial position of the company which has issued the policy. This is particularly necessary, in India, where many insurance companies have come into existence during the last fifteen years, some of which appear to be small fry partaking of the nature of mushroom growth, with slender resources and inadequate equipment. The recent insurance legislation will, it is hoped, place the insurance business in this country on a sounder footing, by requiring insurance companies to make larger deposits with the government and to invest their moneys more safely than at present. Policies of companies incorporated outside the British Empire may not find favour with banks in India, firstly because they do not have a true knowledge of the security and the financial position of such companies, and secondly, because any political tension between this country and the country of their origin may render such policies valueless. It may be mentioned, however, that the Insurance Act, 1938 seeks to obtain some control over foreign companies also, especially by way of requiring them to keep larger deposits in India.

Endowment policies favoured—Owing to the fact that people are getting increasingly insurance minded, different types of policies have come into vogue. As a rule, bankers prefer endowment policies to whole life policies, as there is a definite maturity date in the case of the endowment class. In the case of the whole life policies the banker may have to wait for a long time, before he can realize his advance from the policy money.

INSURABLE INTEREST NECESSARY—The banker should satisfy himself that, when a policy is taken out by a third person, he has an insurable interest in the life of the insured as explained above.

POLICY MUST BE FREE FROM CONDITIONS RESTRICTING ASSIGNMENT—The banker should peruse carefully the conditions of the policy and ascertain whether there are any restrictions likely to affect its value as a security. In the case of some policies such as those of the industrial type, there is, sometimes, a restraint on assignment.

EXTENT OF ADVANCE TO BE MADE—Generally, the banker should not advance more than 85 per cent. of the surrender value of the policy. In the event of an endowment policy, which is to mature after a comparatively short period, the banker may exceed this limit, particularly when he is confident that his customer will continue to pay the premia. The banker should from time to time, in his own interests, obtain from the company official quotations of the surrender value of the policy. Ordinarily a life policy carries, as has been said, no surrender value till the first two or three years' premia have been paid and surrender values often differ from company to company.

ADMISSION OF THE AGE OF THE ASSURED—The banker should see that the age of the person, on whose life the policy has been taken out, has been admitted by the insurance company. If not, he should get the age admitted by the company either by a separate letter, or by indorsement upon the policy itself, as otherwise, in the case of the death of the person insured, the banker may find it difficult to produce the necessary evidence for the purpose. As a precautionary measure, the banker may obtain a birth certificate or a copy of the horoscope of the customer and forward it to the company with the policy, as evidence of the assured's age.

LEGAL ASSIGNMENT OF THE POLICY—From the banker's point of view, as in the case of immovable property, it is preferable to have a legal assignment of the life policy (see Appendix A, Form No. 32, *post*).

EQUITABLE MORTGAGE ON POLICY—From the customer's point of view, however, the simpler and more acceptable method of charging such securities is by way of an equitable mortgage. The customer deposits the policy, together with a written promise to assign it at the request of the banker. In addition to its simplicity, the equitable mortgage has this advantage over a legal assignment, namely, that upon the repayment of the advance, no formal re-assignment of the policy is necessary. As against these advantages, this manner of charging a life policy as a security has certain drawbacks, for instance, should the borrower refuse to assign the policy when called upon to do so, the realization of the security will become cumbersome. The banker has also to prevent the borrower from assigning the policy to some one else. It is, therefore, desirable that the banker advancing money against equitable mortage of a life policy, gives notice in writing to the insurance company concerned, that he is an equitable mortgagee of the policy (see Appendix A, Form No. 32 (*b*), *post*).

MEMORANDUM TO BE SIGNED BY BORROWER AND OTHER INTERESTED PARTIES—When the banker is satisfied with an equitable mortgage or a legal assignment, he should have a memorandum signed by his customer in which the latter should undertake to pay the premia punctually and in case of his failure to do so, authorize the banker to pay them and to charge the amount to his account. It should also be made clear that such payments carry

interest, as in the case of the advance. The banker should see, that all parties having interest in the policy, sign the assignment deed or the memorandum. If it is stated, on the face of the policy, that it is taken out for benefit of a particular person such as the wife of the assured, she must also sign the memorandum.

WHEN A SECOND CHARGE IS CREATED—On receipt of notice of a second charge over a life policy deposited with him as security, the banker should make sure that the amount of his advance or overdraft against the policy is limited to the extent of the first charge, or he should require an additional security. In such a case if the loan granted by him is repaid, he should not re-assign the policy to the borrower, but should hold it in trust for the party holding the second charge, or execute the re-assignment in favour of that party (see Appendix A, Form No. 32, (*a*), *post*).

Ships as Banker's Security

MODERN IMPROVEMENTS LESSEN RISK—It is not unusual for a bank to make advances against the security of steamships, although, of all the securities, there is perhaps none other than these over which, in a physical sense, the lender has less control. But the risks attendant upon navigation are now few compared to what they were in the past. Shylock the Jew, in Shakespeare's Merchant of Venice, was justified in hesitating to advance his *ducats* to Bassario against the security of Antonio's ships and merchandise ; and his remarks, "Ships are but boards, sailors but men ; there be land rats and water rats, water thieves and land thieves, I mean pirates ; and then there is the peril of waters, winds and rocks," were intended to refer to the dangers to flimsy ships of those days, from the vagaries of the mighty ocean. No doubt, later scientific inventions and mechanical progress have eliminated most of the risks from the forces of nature, and reduced the possibility of the sinking of a ship to a matter of a very rare occurrance.

The following are the risks against which a banker lending moneys against such security must guard himself.

RISKS AND PRECAUTIONS—A ship may be sold to a foreign nation and the Registrar of Ships can only inform the lending banker as mortgagee about the sale as the former has no power to stop the sale consequently the banker's security may disappear and the banker may have to fall back on the personal security of the mortgagor, from whom he may, or may not, be able to recover his advances.

MARITIME LIEN—A ship is liable to maritime lien. It may arise from collision at sea, or it may be in respect of salvage securities. It extends to mariners' wages and also to a master's wages. Lien may also be brought into existence by a bottomry bond, which is an agreement by which a master of the ship, when at a foreign port in consideration of moneys obtained by him, undertakes to repay the moneys on successful termination of the voyage of the ship. A maritime lien can be enforced even after the sale of a ship to a *bona fide* purchaser without notice (Bankers Advances by F. D. Stead, Second Edition, p. 55).

REGISTRATION OF SHIPS—A ship requires to be registered compulsorily under the provisions of section 2 of the English Merchant Shipping Act, 1894; the Indian law on the subject is contained in the Registration of Ships Act, 1841. That Act requires a ship in India to be registered at any of the

ports of registry (section 2, *ibid.*) if it is to be deemed a British ship. On the registration of a ship, the registrar issues a certificate of registration.

RISKS OF MARINE POLICIES—The banker will also have to guard himself against certain risks from which marine policies on ships generally suffer, *e.g.*, he should take care to see that the insurance policies, deposited with him, are sufficiently comprehensive to cover the total loss, without saddling him with the liability to pay any premium.

PREFERENTIAL CLAIMS AGAINST THE SHIPS—There is also the danger; that the banker may be sometimes deprived of his security, on account of some preferential claims against the ships, namely, the claims of the captain and the crew for salaries, the claims of the merchants for the merchandise in case of its loss, and the claims in respect of debts incurred by a ship in a foreign country. The last of these may cause the attachment of a ship at a foreign port and the banker may be left in a position far from enviable.

DEPRECIATION—Although it is often said that a ship will always sell at "a price," the lending banker cannot afford to overlook the question of depreciation. He should base his advances on the estimate of a competent valuer. Looking to the wasting nature of the security and the short span of its life, the banker should, for his own safety, try to reduce, year by year, the amount of the advance against a ship.

REGISTRATION—The banker has also to ascertain that the vessel, proposed to be mortgaged is duly registered, and that there is no prior charge on the register. Changes and alterations effected in the ship, or in its ownership, subsequent to its registration, require its registration *de novo* according to section 21 of the Indian Registration of Ships Act, 1841, which runs as follows:—

> *Resignation de novo.* If any ship or vessel, after she shall have been registered pursuant to the directions of this Act, shall in any manner whatever be altered so as not to correspond with all the particulars contained in the certificate of her registry, or if any alteration shall take place in the ownership of any ship or vessel, or of any share or shares thereof, in such cases such ship or vessel shal be registered *de novo* in manner hereinbefore required as soon as she returns to the port to which she belongs, or to any other port within British India, on failure whereof such ship or vessel shall be deemed to be a ship or vessel not duly registered, and any person making use of a certificate for the purposes of any ship or vessel which has been granted in respect of the same, after the same ought to have been registered *de novo*, shall be liable on conviction, before any justice to a penalty not exceeding five thousand rupees recoverable as aforesaid.

MORTGAGE OF MORE THAN HALF OF THE SHARES IN A SHIP NECESSARY TO OBTAIN CONTROL—A banker should also see that if he is to have control over the management of the ship, more than half of the total number of shares in a ship are pledged with him. In case the ship is owned by a company registered under the Indian Companies Act, 1913 the banker should satisfy himself as regards its borrowing powers and take the necessary steps for the registration of charges, as required by the said Act. Notwithstanding all the risks stated above, bankers do occasionally advance moneys against ships or vessels, when the customers are of sound financial standing and good reputation.

Book Debts as Banker's Security.

RATING OF BOOK DEBTS AS SECURITY—Bankers' advances to their customers are sometimes secured by the assignment of debts, due or accruing

due to the latter. The assignor may have to receive money for goods sold or services rendered to a certain person, or money may be due to him under a will. It is unusual for bankers to make advances against the security of book debts, as such transactions carry many risks. Moreover, bankers do not like to be placed in the position of debt collectors. An assignment of debt strongly suggests impecuniosity. However, when the banker is satisfied both as to the validity of the claim and the solvency of the party owing the money, he may accept trade debts, particularly in the case of a company, by way of a debenture, giving a floating charge on them as security for an advance. Bankers, in certain circumstances, take an assignment on moneys payable from a special fund, such as a legacy under a will, or interest in a trust. It is understood that during the last war, banks lent freely against payments due on account of government contracts and the same practice holds good during the present war. The following features of this security will be of interest to bankers:—

ASSIGNMENT OF BOOK DEBTS RECOGNIZED BY EQUITY—Since the common law, apart from the customs of the law merchant, did not recognize the transfer of a benefit of a contract which was still executory so far as the assignor was concerned, or rights of action arising from it, the assignee could not sue upon it in his own name, and used the assignor's name for the purpose. The common law rule is sometimes expressed by the phrase, "A chose in action is not negotiable." Its assignee had to acquire the right of action by means of a substituted agreement. Thus, if *A* desired to transfer the amount due to him from *B*, to *C*, it was necessary to have the contract between *A* and *B* substituted by a new contract by which *B* was to undertake to pay the amount to *C*. Equity, however, permitted the assignment of such rights which were in respect of definite sums of money.

RECOGNITION OF ASSIGNMENT BY STATUTE LAW—Section 25 of the Judicature Act, 1873 (36 & 37 Vict., c. 66) legalized an assignment of "a chose in action" including book debts. It declared that if a transfer or assignment was made in writing under the hand of the assignor and an express notice thereof was given in writing to the debtor, the transfer passed the right to receive the debt, or the "chose in action" as it is called, to the assignee in law as well. The transfer took effect from the date of the notice and confirmed all the legal rights and remedies of the assignor to the assignee, against the debtor. The position has since been modified in England by the law of Property Act of 1925 (15 Geo. 5, c. 20), which makes the transfer effective from the date of its execution, as distinguished from the date of notice.

INDIAN LAW—In British India, it is lawful to assign "choses in action" which are here called "actionable claims" to anyone, except to a judge, a legal practitioner, or an officer of a Court of Justice (sections 130 and 136 of the Transfer of Property Act, 1882).

FORM OF AN ASSIGNMENT—The following points in connection with assignments of an actionable claim require consideration. An assignment must be in writing signed by the assignor. No particular form is necessary, provided that the intention to pass by assignment, the interest of the assignor to the assignee, is clear. An assignment may be in the form of an order addressed to the debtor authorizing him to pay the assigned debt to the assignee, but, where the debt assigned is secured by a promissory note or a bond, the writing must appear on the note or bond itself.

CONSIDERATION NOT ESSENTIAL—Consideration is not essential to the validity of an assignment, it may be by way of gift. A debtor is entitled to valid discharge by payment, upon direction from his creditor to a third party of the debt, irrespective of whether there was consideration for the assignment or not, as between such third party and the original creditor.

NOTICE OF ASSIGNMENT TO THE DEBTOR NECESSARY—In order to make the debtor liable to the assignee, it is essential that due notice of assignment be given to him (sections 130 and 136 of the Transfer of Property Act, 1882). It needs no argument to say that the original debtor has to be informed of the assignment in order that he may tender payment of the debt due from him to the assignee. The interests of the assignee also require that the debtor be informed of the assignment to him of the debt, so as to prevent the debtor from paying the amount to the assignor. The validity of the assignment does not, however, depend upon due notice being given or not. But to be on the safe side, it is desirable that the banker who makes an advance against book debts should obtain an undertaking from the customer that he will pay over to the banker any amount or amounts he may happen to receive in respect of the debt or debts assigned.

ASSIGNEE'S RIGHT SUBJECT TO EQUITY—It must be stated in conclusion that the assignee can only stand in the shoes of the assignor and cannot have better rights than those which the assignor possesses. For instance, if the debtor has a counter-claim against the assignor, the right to receive the amount of the debt assigned will be subject to such claim, notwithstanding that the assignee had either no knowledge of the same, or, the assignor definitely stated in the agreement of assignment, that no claim would be raised against the assignee (section 132 of the Transfer of Property Act, 1882) Similarly, a general assignment of book debts by a person is void against a trustee in bankruptcy, as regards any debts not paid at the commencement of the bankruptcy, unless it has been registered as a bill of sale.

Debenture as Banker's Security.*

DEFINITION—According to R. S. T. Chorley (Law of Banking, p. 274) "debenture is the name given to the document by which a limited company acknowleges receipt of money which it promises to repay with interest at a future date (usually fixed) and mortgages or charges its assets as security for its borrowings." A debenture is generally issued by an incorporated company though an unincorporated body such as a club, or an association may also issue such a security (see Appendix A, Form No. 4, *post*).

MAIN CLAUSES OF A DEBENTURE—A debenture should provide for payment of the money obtained on its security, except when it is made irredeemable. It should also provide for the payment of interest. The document usually confers a charge, though this requirement is not essential.

GENERAL—In the case of a debenture issue by a company, reference should be made to the resolution authorizing the issue of the debenture. It may be drawn either in favour of the bank or its nominee who will hold it in trust for the bank, or it may be in blank. In the last case, it becomes payable to bearer. The debenture may be for a definitely stated sum, or it may secure

* For an illuminating and detailed treatment of the subject, the reader is referred to the report of the lecture on the Legal and Practical Aspects of the Relations of Bankers with Limited Companies published in the Journal of the Institute of Bankers, April, 1939, pp. 162—178.

the balance of an account, including advances to be made in future. When a debenture is issued for a fixed sum it can be more easily sold than when its amount is not fixed. The debenture is generally expressed to be payable on demand and provides for either a fixed rate of interest, or a fluctuating rate with a minimum to be payable quarterly or half-yearly. The company issuing the debenture usually charges, as security, all its undertaking and property present and future.

Provision for fixed and floating charges—Among the other conditions, there is a provision making the debenture a first charge on the undertaking and the property of the company, and also constituting a fixed charge on certain property described therein. The debenture contains a covenant made by the company not to create any further mortgages or charges on its undertaking or property, which would rank either side by side or in front of the debenture. Then a demand in writing, on the part of the holder of the debenture, is stipulated as one of the conditions for its repayment.

Enforcement of the security—The other important clauses in a debenture are those dealing with a bank's power to enforce the security not only by exercising the power of sale as mortgagees conferred upon the trustees for the debenture holder in respect of assets specifically mortgaged, but also by the appointment of a receiver. The latter course is important when the company is dissipating its liquid assets to prevent which the trustees must act quickly. If the debenture is repayable on demand it is not necessary to state the other events such as presentation of a petition for the winding up of the company, or the levying of distress or execution upon any of the properties of the company or the company entering into arrangement or composition with its creditors ; usually banks have such events put down even in the case of debentures repayable on demand.

Receiver's powers to be extensive—It is desirable that the receiver's powers should be such as to meet the various circumstances and contingencies which may arise. Some of the more important powers are to manage and carry on the business and raise money for the purpose ; to compromise claims, to appoint agents, officers and tenants, to let the freehold property and to sell the assets.

Memorandum of deposit—A debenture for a fixed sum is generally deposited, together with a memorandum signed by an officer or officers of the company duly authorized on its behalf. The object of the memorandum is to make the debenture issued for a definite sum, available for a fluctuating advance by way of an overdraft or a loan ; it links the debenture to the company's account with the banker. This has the effect of enabling the banker to sue the company on the overdraft, as apart from the debenture.

CHAPTER XIV

SUBSIDIARY SERVICES

THEIR NATURE AND UTILITY TO THE COMMUNITY—As stated in the opening chapter of this book, the modern joint-stock bank has to perform not only proper banking functions, but also those which are more in the nature of services undertaken with a view to increase its utility to the community. From a mere depository of surplus cash it has gradually developed into an institution, which provides for practically every financial requirement of commerce and business as well as of the general public. The modern bank has made itself indispensable not only as the custodian of deposits of surplus balances of the community, but also as a repository of financial advice and commercial information. It gives advice to investors, buys and sells securities on their behalf, helps governments and corporations in raising loans, provides financial aid to industries, acts as an administrator of estates, does the business of trustees, executors, and administrators under a variety of conditions involving the custody and use of trust funds, acts as guardian to minors; it also makes and receives payments on behalf of its customers. All manner of services for which integrity and competency are essential come within the purview of the modern bank which has, to suit changing conditions, evolve itself into an institution quite different from its humble parent, the deposit bank of a century ago. The child had to outgrow the activities of its parent, not only from its desire to increase its utility to the community, but also on account of the struggle for existence which is the keynote of modern civilization. In this short chapter, we can but discuss briefly the principles of law and practice governing these many subsidiary functions of a present day banking institution.

These several services may be classified broadly into :—

(*a*) Agency services ;

(*b*) Miscellaneous or general utility services.

Agency services.

Besides the collection and payment of cheques and bills, the modern bank acts as a special agent of its customer in the performance of the following functions :—

(1) Payment of subscriptions, premia (see Appendix A, Form No. 7 *post*), rents, etc., and collection of promissory notes, coupons, dividends (see Appendix A, Form No. 8, *post*), salaries pensions, etc.

(2) Purchase and sale of stocks and shares ;

(3) Acting as trustee, executor and attorney ;

(4) Serving as correspondent and representative of its customers, other banks, and financial corporations.

PAYMENTS AND COLLECTIONS—When a person makes payments in respect of subscriptions, insurance premia, rents, etc., or receives salary or pension or moneys due on promissory notes, coupons, dividends, interest warrants,

rents, etc., he generally entrusts the work to his banker. It will be seen at a glance that these functions, which a modern banker usually undertakes to perform on behalf of his customer, are similar in nature to the payment and collection of cheques, a function which the banker is legally bound to perform for his customers. These services earn for the banker not only a small commission but also the goodwill of his customers and are thus an important, though indirect, asset in promoting the business of the bank. In either case, the banker acts as an agent of his customer. Moreover, it will mean unnecessary expense to a customer to employ a separate agent for this kind of work, when his banker is prepared to do it for a nominal charge. Before taking upon himself these duties, the banker will, however, be well-advised to insist upon having from his customer, a clear mandate containing the necessary instructions empowering him to act as his agent in these matters.

Banker's Liability Limited.

In actual practice, a banker generally informs his customers whenever he makes or receives any payment in their behalf in accordance with their instructions. But even if he gave no such intimation, the banker would still escape liability if his action resulted in loss to his customer, provided, of course, the banker has always acted *bona fide* and according to the customer's standing instructions in the mandate. For instance, if *A*, a member of the royal Western India Turf Club, instructs his bank in Bombay to pay his annual subscription to the Club, the bank will not be liable for making payments, even after *A* has ceased to be a member of the club, if *A* has failed to cancel his standing instruction in this respect to the bank. Similarly, if a customer has asked his bank to pay on his behalf a certain sum as premia on his insurance policy, and debit the amounts so paid to his current account, the bank cannot be held liable, if it is found later on, that the amount so paid was more than the amount due to be paid, provided that the excess payment was due to the wrong instructions on the part of the customer.

Non-liability in case of ambiguous instructions.

If the customer's instructions happen to be in such uncertain terms as to yield two different meanings, and the banker puts on them a meaning in the belief that it was the meaning the customer meant, and in good faith and without negligence adopts and acts upon it, then, it will not be open to the customer to repudiate the banker's action as unauthorized, on the ground that he (the customer) had intended the instructions to convey the other meaning to which they were equally susceptible. In such cases, the banker cannot be blamed, as the mistake, if any, can be attributed to the customer's negligence in giving vague instructions.

Having stated the fundamental principles governing the banker's position as agent for his customer, we propose to examine his position with regard to the making and receiving of payments of instruments other than cheques and bills.

PROMISSORY NOTES—By section 4 of the Negotiable Instruments Act, 1881 "a 'promissory note' (see Appendix A, Form Nos. 24, 24 (*a*), 24 (*b*), 24 (*c*), 24 (*d*), 24 (*e*), *post*) is an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument."

It will be noticed from the above definition, that promissory note is distinguished from a bill of exchange only in that while a bill of exchange is an "order to pay," a promissory note is an "undertaking or a promise to pay." It follows, therefore, that the maker of a promissory note is primarily liable on it, like an acceptor of a bill of exchange. The promise to pay may, however, be in the form of a letter, or in any other form, fulfilling the requirements of the section quoted above. A mere acknowledgment of a debt, without any indication of the intention or promise to pay on the part of its maker, cannot be regarded as a promissory note. For instance, a piece of paper with the words, "Mr. K. C. Puri, I.O.U. Rs. 2,000," is not a promissory note, even if it was duly signed and stamped. Nor can a promise to pay an indefinite sum of money, or an undertaking to pay a definite sum of money, subject to a condition, the happening of which is uncertain, *e.g.*, "On the marriage, on the recovery from illness, or on the death of Mr. So and So," be regarded as a promissory note. However, it is not necessary that the amount stated should be in terms of the currency of the place of payment. To state the place of execution is not essential for the validity of a promissory note, although it is desirable to do so. At any rate, when a note is made payable at a particular place as for example at a particular branch of a bank, presentment, at that branch, is necessary in order to render an indorser liable.

When promissory notes are made payable at a bank, the banker is justified in paying them when due, and debiting their amounts to the maker's account. The banker should, nevertheless, be careful in the matter of indorsements in the case of promissory notes made payable to the order of a specified person, as the protection granted to the paying banker by section 85 of the Negotiable Instruments Act, 1881 does not extend to promissory notes bearing forged indorsements.

As a promissory note is a negotiable instrument and in view of the fact that we have already dealt with questions pertaining to negotiable instruments, the liability of the parties to a negotiable instrument, rules relating to their presentment for acceptance and payment, their delivery to customers for purposes of negotiation, their completeness, their liability to stamp duty, etc., it is unnecessary to dilate on them here.

Coupons and their Collection—The word "coupon," which is derived from the French word *Couper*, to cut, literally means a piece cut off. It is used generally for an interest warrant, and sometimes for a dividend certificate relating to debentures, or bonds, or shares, which are in the form of bearer securities. As a company issuing such a security cannot know exactly, who is holding the security at the time of payment of interest or dividend, it attaches to the security, a sheet of coupons, each bearing the number of the security to which it relates, and the period to which the interest or dividend, represented by the coupon, pertains. Sometimes the sheet of coupons is not attached to the security, whether bond or debenture. These coupons are cut off when due, and presented for payment to the issuing company, or government, or its bankers. When dates of payment are not fixed, as is usually the case with the ordinary shares of mining or other trading corporations, they are announced in the press. In presenting coupons for payment, it is customary to complete a listing form and to leave the coupons at the paying office for three or four days for examination, after which period the amount due, less income tax, is paid. Bearer securities, without coupons, are not considered as good delivery on the London Stock

Exchange, and the coupons should not, therefore, be detached from the bond, debentures, or shares. When the last coupon is detached, the part of the sheet, which still remains, is known as the *talon*, and which is utilized for getting a fresh sheet of coupons from the body issuing the debenture. Coupon sheets do not, sometimes, carry a *talon*, in which case, the holder of the security has to write to the company for a fresh sheet of coupons.

In the case of bonds or debentures of companies, not paying dividends or interest at fixed dates, the banker, when entrusted with the collection of the relative coupons, has to keep his eye on the advertisement columns of newspapers, in order that he may promptly present them for collection upon announcement of dates for the payment of the dividend. It is usual for bankers entrusted with the collection of coupons to enter their full particulars in a coupon book, and where given, the respective dates of their payments in a diary. As the English law recognizes that coupons can be effectively crossed, it may be reasonably presumed that their crossing is likely to be upheld by the Indian courts also.

The collecting banker should not, as a rule, credit his customer with the value of a coupon, particularly of one payable in a foreign currency, until he receives advice of the net amount realized, for the simple reason that it cannot be readily calculated, not only on account of differences, in income-tax deductions, but also because of the fluctuations in the rates of exchange. When a coupon is payable in more than one country, the customer has to give instructions as to whether he wishes his banker to collect the amount or sell the coupon as a bill of exhange payable in the other country.

In the event of the loss of a coupon, the banker collecting it, should inform the paying banker, so that the latter may be put on inquiry as to the title of the person presenting it, and thus stop payment being made to a wrong person. In case the paying banker is unable to fix the person entitled to receive payment, he may institute an interpleader suit, to enable the court to decide, as to who is the party lawfully entitled to receive the money.

POSTAL ORDERS—A postal order is an order of the postal department of a country authorizing the payment of the amount stated on its face at any post office of the country or any other country with which there is an arrangement for the same. These orders are issued for facilitating the remittance of small amounts from one party to another in the same country or sometimes they are used for transferring small sums of money from one country to another at a small cost. The purchaser of such an order is recommended to fill in the name of the payee as well as the name of the post office where the payment of the order is desired to be made but this is not compulsory. He may cross the postal order, in which case the payment will be made only through a bank which signs on behalf of the payee. The banker should ordinarily get his customer's signature on the postal order so as to avoid complications in case his customer's title to the postal order is defective. Unlike England where protection has been given to the banker collecting such orders, by section 25 of the Post Office Act, 1908 (8 Edw. 7, c. 48) bankers in India are, in our opinion, at a disadvantage in this respect.

COLLECTION OF DIVIDEND AND INTEREST WARRANTS—A dividend or interest warrant is an order, issued by a joint stock company and drawn on its bankers for payment of the specified sum of money to the registered holder of one or more of its shares or debentures. According to the Indian usage, such warrants are treated just like cheques, when they are drawn in con-

formity to the legal definition of a cheque. When issued in receipt forms, or when they are drawn upon a party other than a banker, they are, liable to a stamp duty of one anna, for sums exceeding Rs. 20. When a dividend warrant is made payable to several persons, the signature of one of them is generally accepted as sufficient; but, in the case of an interest warrant, the signatures of all are necessary. A banker, as a rule, takes the same precautions in the collection and payment of these warrants, as in the case of cheques. When a dividend or interest warrant provides a special place for signature, the holder of the relative share or debenture must sign in that place, and in no other. When dividend or interest is paid direct to the banker, he has to discharge the warrant in the required manner. Even when it is made payable to R. C. Dalal or bearer, it nevertheless requires R. C. Dalal's discharge. Unless authorized by the company on whose behalf the payment is made, a *per procuration* signature is not accepted. Section 97, clause 3 (*d*) of the Bills of Exchange Act, 1838 (45 & 46 Vict. c. 61) authorizes the application of the provisions of the act relating to crossed cheques to warrants for the payment of dividends, consequently, then, such warrants can be crossed in England. Although there is, in India, no statutory provision made in the Negotiable Instruments Act, 1881 corresponding to the provision in the Bills of Exchange Act, 1882, in respect of dividend warrants, courts in India, however, are likely to extend the privilege of negotiability to instruments like dividend warrants which are negotiable by the custom or usage of the trade. Thus in a Calcutta case (*Anglo India Jute Mills Co.* v. *Omode Mull* 38, Cal. 127) the title of a person holding pakka delivery orders of jute by indorsement was held to be valid. The courts are likely to require that an instrument, to be deemed a negotiable instrument, should be drawn in the form of a negotiable security for a certain sum of money or representing a certain sum of money and rendering it capable of being sued on by the holder of it *pro tempore* in his own name, that is to say the title to which could pass, by the custom of the trade, to the holder in due course by delivery or by indorsement and delivery, as the case may be. As under the National Debt Act, 1870 (33 & 34 Vict., c. 71) the term "dividend" was used in respect of interest on British Government stock, such warrants were covered by the section referred to above, although interest warrants are apparently outside this category unless they are in the form of a cheque.

Salaries, pensions and rents—In modern times some customers, such as government officers, authorize their bankers to draw their salaries or pensions on their retirement. This is done by the officer in question making his salary, or pension bill payable to his banker, so as to enable the Accountant General of the administration concerned to issue the cheque in respect of the salary, or pension, in the name of the banker. It is a convenient arrangement, particularly if the officer happens to be away from his headquarters, either on tour, or on leave. The banker is expected to use due diligence in the discharge of his duty. Bankers generally do not undertake the collection of rents, unless they are to be collected from first class parties, involving no special trouble.

In the absence of any special instructions, the banker is presumed, in case of emergency, to have authority to exercise his judgment in protecting his principal from loss and to do all such acts, on the latter's behalf, in the same manner as a man of ordinary prudence would do in his own case, under similar circumstances, (section 189 of the Indian Contract Act, 1872). Thus, for example, when some coupons are lost, the collecting banker, in exercise of

this statutory authority conferred on an agent, should without waiting for the customer's instructions in this behalf act as in a case of emergency, and immediately apprise the paying banker of their loss. Later on, he may ask the customer himself to take steps against the thief, or any other person, liable to account for the payment made thereon. The use of his discretion will be judged, not merely from the result of his action, but also from the intention at the back of it. If the banker has acted in good faith and without negligence, he cannot be held liable for any loss resulting to his customer. It is desirable, however, that the banker should obtain the customer's ratification as early as possible.

PURCHASE AND SALE OF STOCKS AND SHARES—In buying and selling stocks and shares on behalf of his customer, the banker's position is that of a special agent of the former. Consequently, he is bound to act in strict conformity with the customer's instructions and must follow the usual course of business essential for these operations. In other words, he should take every possible care in the discharge of his duties in this capacity and should do his best to protect his customer's interest. He should, for instance, act with promptitude in placing the order with the broker when buying and forwarding to or holding for his customer the necessary documents of title, or in receiving and placing to the credit of his account the sale proceeds. He should also make sure that he receives or gives delivery of the proper securities and that he pays or receives on behalf of his customer, the correct amount in respect of each such transaction. While taking delivery of securities on behalf of his customer, the banker should satisfy himself that the transfer deeds and the relative securities are in order. He will be liable to make good any loss arising from his negligence in connection with such a transaction (*Manchubhai* v. *Iod*, 20 Bom. 633).

Banks in India not members of the Stock Exchange. In most of the western countries, *e.g.*, Germany, France, Holland, Italy, etc., every important bank is a member of the local Stock exchange and thus not only promptly carries out its customer's orders for the purchase and sale of stock exchange securities, but also keeps the market active. This is not the case in India, where the banker forwards his customer's instructions to a broker and if they vary from those given to the banker he is liable to the customer for any loss he suffers thereby as well as to the broker if the transaction does not happen to be authorized by the customer. Again, if the banker accepts the broker's cheque in payment for securities sold, he will be liable to his customer should the cheque be subsequently dishonoured, when the responsibility for the reimbursement of the customer will rest with him. Such a difficulty, however, is not likely to arise when the broker and the customer have their accounts with the same banker.

Need for obtaining precise instructions. Bankers safeguard their interests by insisting on the customer giving precise instructions regarding the sale or purchase of stocks and shares. A special form is used for this purpose, on which the customer is required to give full particulars of the securities, the limits if any within which they are to be sold or purchased, and, in the case of registered securities, full details as regards the name, address and occupation of the person or persons in whose name or names they are registered, when they are to be sold, or the name, address and occupation of the party or parties in whose name or names they are to be registered after they have been purchased; (see Appendix, A, Form No. 42, *post*).

Authority to debit Customers' Accounts. As a rule, banks require their customers to send with their orders for purchase, a duly signed authority allowing them to debit their respective accounts with the purchase moneys; failing which the customers' cheques for the amounts must be obtained before the transfers are duly executed. All orders issued to the brokers are recorded and kept handy for reference purposes in a special register of stock and share transactions.

Practice regarding brokerage. The practice in western countries is that the banker makes his profit on these transactions by dividing the commission with the broker—which fact is required to be clearly indicated on the broker's contract note. An Indian banker, on the other hand, generally makes a small charge in addition to the brokerage allowed to stock-brokers. According to the practice of the members of the Bombay Stock Exchange, the brokerage is sometimes included in the rate given in the contract of purchase or sale of stock exchange securities. The Indian practice should be discouraged in the interests of the investing public. In order to enable the establishment of a practice which would emphasize the legal position that a broker is only the agent of a constituent, the Morison Stock Exchange Inquiry Committee (1937) recommended that the issue of agency contracts, showing clearly the amount of brokerage charged, should be made compulsory.

Advice about investments. Entering into stock and share transactions, on behalf of the customer, must be distinguished from the making of investments at banker's own discretion. As already stated, the courts have so far held that the business of a banker is not that of an adviser for investments. It has, however, become for him a common practice to give such advice when asked for. According to Sir John Paget, if it is usual for banks to share in the brokerage, there appears to be no reason why they should not also undertake some part of a share-broker's duty, namely, advising about investments and therefore it might reasonably be considered incidental to the relationship between a banker and his customer and consequently a part of the banking business. As it has been presumed throughout this volume that joint stock banks or their managers do act in good faith, the only risk a banker may incur can arise from his negligence in giving proper advice. Although the bank manager is generally not in a position to advise on every one of the hundreds of securities quoted on the stock exchanges, he has at least at his disposal the assistance and knowledge of the experienced brokers doing business on behalf of his bank. If he, however, takes it upon himself to advise, he should do so only after having safeguarded himself and the bank, by obtaining the fullest possible and the most reliable information but it is desirable not to commit either himself or the bank by giving advice as to a purchase or a sale.

Disclosure of customer's name to broker. When a banker discloses the name of his customer to the broker and thus establishes privity of contract between them, it would seem that banker incurs no liability. However, if the broker makes the purchase or sale on behalf of the banker and the name of the customer is given merely to identify the transaction or to supply the information necessary for the preparation of the transfer, the banker is liable to the broker.

ACTING AS TRUSTEE, EXECUTOR, ADMINISTRATOR AND ATTORNEY—The Trust Company was originally born in America and though its principal func-

tion at its inception was the carrying out of trusts for individuals, estates, and corporations, it has since gradually extended the sphere of its activities so as to embrace several other functions—namely the receiving of deposit payable on demand and subject to withdrawal by cheque or on notice, making advances against stock exchange or other securities, buying in commercial paper, etc.,—all of which can properly be spoken of as relating to commercial banks.

When the National and State banks in the United States saw trust companies competing with them in their banking business, they also decided to offer to their customers the facilities provided by the trust companies. The same necessity has forced itself on banks in other countries, and today, they readily undertake the duties of trustees, executors, or administrators of estates. Of late, some Indian joint stock banks have also assumed these duties, either by opening separate trust or administration departments, or by starting subsidiary companies wholly owned and managed by them. The Central Executor and Trustee Company Ltd. was started by the Central Bank of India Ltd. more than ten years ago and is said to be doing good business.

Banks as Trustees—There is no gainsaying the fact that banks are naturally fitted for performing these services. *Firstly*, unlike individuals, banks, being corporate institutions have continuous existence, and *secondly*, an individual trustee or executor might not be able to spare the necessary time. *Thirdly*, there are many temptations besetting an individual and one cannot know whether, in the face of them, he will follow the right path and act honestly. *Fourthly*, the amount of such work as banks get enables them to engage specialists on their staff, to execute commissions requiring special knowledge and experience. Thus, the various trusts in their charge can be managed more efficiently, than is the case when each trust is administered separately. *Fifthly*, the management of trusts, by banks, is economical, as the overhead charges are spread over a number of trusts. Lastly by undertaking work of this nature banks increase their utility to their customers.

As section 50 of the Indian Trusts Act, 1882, expressly provides that a trustee has no right to receive remuneration for the labour, skill, and loss of time involved in executing trust, unless expressly allowed by the trust deed, or, unless there is an express contract to that effect with the beneficiaries or the court, entered into at the time of accepting the trust, Banks ought to see that provision is made in such documents for the payment of their commission and other charges.

It should not be forgotten that these services are not free from risks, and it is, therefore, necessary for the banker to take certain precautions in the discharge of his duties as a trustee.

Duties of a trustee. On his appointment as a trustee, the first thing the banker should do is to ascertain the full facts regarding the property to be administered and to find out the encumbrances, if any, on the same. He should be reluctant to give his consent to be a trustee, in case he finds that the major portion of the property consists of partly paid shares liable to heavy calls, unless the other property is of sufficient value to enable payment of calls on the shares.

To take proper care of trust property. A trustee is required to deal with the trust property in the same way as a person of ordinary prudence would do with his own property. He should either do what he is required to do by the trust instrument, or when it is not possible to do so he should act according to the directions of the beneficiaries, who are major, or as the court otherwise orders. In exercising his discretion when permitted or when circumstances require, he must not only act honestly but must also use as much diligence as a prudent man of business would exercise in respect of his own affairs. A trustee should see that the trust property is secure. He should not allow the assets of the testator to remain outstanding on personal security, notwithstanding that the testator had himself made the loans. A trustee should not ordinarily allow money to remain in the hands of a banker for more than one year after the testator's death and after his debts and other liabilities have been paid. A trustee is expected to call in his testator's moneys within one year from the death of the testator.

To provide for funeral expenses. A trustee must first of all provide for funeral expenses and for expenses to be incurred for taking out probate. Next comes provision for wages to servants for three months before death. Thereafter provision should be made for other debts according to priorities by lien or charge if any. Finally, provision may be made for legacies.

To act in accordance with instructions in the trust deed. While he should avoid putting unnecessary obstacles in the way of his *cestuis que trust*, it is unwise on a trustee's part to incur any risk which can be eschewed. He should act in accordance with the terms laid down in the trust instrument as any divergence from, or infringement of, the provisions contained in the trust deed, on his part, is sure to make him liable for breach of trust and he may be required to make good any loss the beneficiary has thereby sustained, "unless the beneficiary has by fraud induced the trustee to commit the breach, or the beneficiary being competent to contract, has himself, without coercion or undue influence having been brought to bear on him, concurred in the breach or subsequently acquiesced therein with full knowledge of the facts of the case and of his right as against the trustee" (section 23 of the Indian Trusts Act, 1882). Unless expressly authorized by the instrument of trust, a trustee must invest in the authorized securities mentioned in section 20 of the Indian Trusts Act, 1882. Trust deeds which confer a wider discretion to trustees as regards investment, generally mention the securities in which they are authorized to invest, but a bare power to invest at discretion will not usually entitle the trustee to go beyond the range of authorized securities. Even where the trustee is given power to invest trust funds at his discretion, it does not necessarily follow that he has power to invest them in securities beyond the range of the trustee variety. Such authority gives the trustee absolute discretion only in name. A trustee should never invest trust moneys in inadequate and hazardous securities. To make a trustee liable for breach of trust, however, it has to be proved that he has been guilty of some improper act, neglect or default; for example a trustee cannot be held responsible if a broker or other person of sufficient standing and good repute, with whom the trust moneys or securities have been deposited in good faith, absconds, or if the securities depreciate; but, he must in no case, mix trust funds with any other moneys. If the administration of a trust comes into dispute, courts are generally inclined to presume against the trustee.

To ask for court's order in doubtful cases. Courts are inclined to help only those trustees who act scrupulously and honestly in the administration of trusts but give no support to those who, however anxious they may appear to be to assist the beneficiaries, act without any regard for the directions laid down in the trust instrument. The best guiding principle for a banker is to carry out strictly the terms of the trust, and in case of a real doubt as to the meaning of any provision of the trust deed get the question settled by making a petition to the principal civil court of original jurisdiction in the locality. The trustee stating in good faith the facts in such a petition and acting upon the opinion, advice, or direction given by the court shall be deemed so far as regards his own responsibility, to have discharged his duty as such trustee in the subject-matter of the application (The Indian Trusts Act, 1882, s. 34).

Liability of trustee for conversion. It should not be ignored that, according to law, a trustee of any property, whether for the use or the benefit of a private person or for any public or charitable purpose, is liable to be convicted of offence and sentenced, if he is found guilty of converting or appropriating any part of the trust property to his own use or benefit.

BANKS AS EXECUTORS AND ADMINISTRATORS—The rights of executors and administrators are practically the same, except that the former must carry out the directions contained in the will of the deceased, whilst the latter, as there is usually no will, have no obligations other than those laid upon them by the law. There may be more than one executor of an estate, but a single administrator is generally the case.

Who may be appointed executor or administrator? Under the Indian Succession Act, 1925 a probate of a will cannot be granted to a person who is a minor or who is of unsound mind (section 223). Similarly, letters of administration cannot be granted to any person who is a minor or who is of unsound mind (section 236). Thus it is clear that only a minor or a person of unsound mind, is disqualified from being an executor or an administrator. Yet it seems to have been doubted that a corporation was also disqualified from acting as executor or administrator. That doubt has since been removed by the passing of the Indian Succession (Amendment) Act, 1931, section 2 whereof made an addition to sections 223 and 236 of the original Act, referred to above, as follows :—

> Nor to any association of individuals unless it is a company which satisfies the conditions prescribed by rules to be made by the Provincial Government in this behalf.

The effect of the amendment clearly is to qualify those companies which come within the purview of the aforesaid words, to hold the offices of executors or administrators. The conditions prescribed by the Provincial Government in this behalf, are as follows :—

(1) The company shall be either (a) a company registered under the Indian Companies Act, 1913 or (b) a company constituted under the law of the United Kingdom of Great Britain and North Ireland and having a place of business in British India.

(2) The company shall be empowered by its constitution to undertake trust business.

(3) The company shall have a share capital for the time being subscribed of not less than (*a*) Rs. 10,00,000 in the case of a company registered under the Indian Companies Act, 1913 and (*b*) £10,000 in the case of a company constituted under the Law of United Kingdom of Great Britain and North Ireland of which at least one half shall be paid in cash. The Provincial Government has power to exempt any company from the operation of this last requirement. It will be seen from the rules set forth that companies incorporated under the Indian Companies Act, to become eligible to take up this business of executor or administrator, are required to have much more subscribed capital than the companies constituted under the laws of the United Kingdom. The reasons for such discrimination are not quite obvious.

Duties of executors and administrators. In discharging their duties as executors or administrators, bankers have to adhere closely to the will in the former case, and to the terms of administration in the latter. They are required to issue notices in some of the leading dailies of the locality, calling upon creditors and others having claims against the deceased, to send in their claims and prove the same on or before a fixed date. The notice will usually declare, that, on the expiry of the fixed time, the assets of the deceased will be distributed only among the claimants whose claims have been satisfactorily proved, and that the executors will not be liable to any person who fails to give proper notice and proof in support of his claim, before the distribution of the assets. Although this method appears to absolve the executors completely, yet it does not appear to prejudice the right of a creditor to follow the assets in the hands of any person who has received the same. If a banker pays a legacy of his own accord, he cannot compel the legatee to refund the money in order to pay the other legatees, but he can do so if he has paid it under legal compulsion. If after payment of legacies, some debts remain unpaid of which the executor had no notice at the time of payment, and he is afterwards obliged to discharge them, he is entitled to call upon the legatees for proportionate refund.

PAYMENT OF COURT-FEES—The banker undertaking the duties of an executor or an administrator, has to take scrupulous care in the payment of court-fees. If, as a result of over-valuation of the estate, he has paid higher fees than were actually due, he can apply for refund only under certain conditions. For example, if on applying for the probate of a will, or letters of administration, he has estimated the property of the deceased to be of greater value than it afterwards proves to be and has consequently paid an excessive court-fee thereon, he can, within six months after the ascertainment of the true value of the property, apply for a refund of excess fee to the chief controlling revenue authority for the local area in which the probate or the letters of administration, has been granted. He will be expected to produce the probate or the letters of administration in question before the said authority in addition to an inventory and valuation of the property of the deceased, verified by an affidavit or affirmation. The said authority will have no objection to refund the excess paid if it is satisfied that the fee paid on the probate, or on the letters of administration, was in excess of that required by law. Similarly, if the court-fee paid is less than that is actually due, the executor or the administrator will be subject to some penalties, if the default is due to fraud or failure on his part to ascertain

the exact value of the estate. By section 19G of the Court-fees Act, 1870, it is provided :—

> Where too low a court-fee has been paid on any probate or letters of administration in consequence of any mistake, or of its not being known at the time that some particular part of the estate belonged to the deceased, if any executor or administrator acting under such probate or letters does not, within six months . . . after the discovery of the mistake or of any effects not known at the time to have belonged to the deceased, apply to the said Authority [*the Chief Controlling Revenue Authority for the local area*] and pay what is wanting to make up the court-fee which ought to have been paid at first on such probate or letters, he shall forfeit the sum of one thousand rupees and also a further sum at the rate of ten rupees per cent. on the amount of the sum wanting to make up the proper court-fee.

BANKER AS ATTORNEY—As a constituted attorney of his customer, the banker's position is safer than that of the executor or the administrator. The object of granting a power-of-attorney to a banker is to authorize him to receive dividends, interest on securities, belonging to his customer and to give valid discharge therefor. It may also empower the banker to sign transfer forms, etc., in respect of sales and purchases of stock exchange securities, made by him on behalf of his customer. Thus, the customer is saved the trouble of signing dividend and interest warrants, as well as transfer forms. The banker makes a charge in respect of the services thus rendered by him to his customer.

Legal effect of banker's acts done in pursuance of power-of-attorney. The provisions in the power-of-attorney are carefully worded and the banker's duty ends with his acting in accordance with them. All acts done by him in such capacity shall be as effectual as if they had been done by the customer himself. A general power-of-attorney is not restricted by the mention of specific acts. Section 3 of the Powers-of-Attorney Act, 1882, affords the following protection to an attorney :—

> Any person making or doing any payment or act in good faith in pursuance of a power-of-attorney, shall not be liable in respect of the payment or act by reason that, before the payment or act, the donor of the power had died or become lunatic, or unsound mind, or bankrupt, or insolvent, or had revoked the power, if the fact of death, lunacy, unsoundness of mind, bankruptcy, insolvency, or revocation was not, at the time of the payment or act known to the person making or doing the same But this section shall not affect any right against the payee of any person interested in any money so paid; and that person shall have the like remedy against the payee as he would have had against the payer if the payment had not been made by him.

BANKS AS CORRESPONDENTS OF OTHER BANKS AND OTHER KINDS OF FINANCIAL CORPORATIONS—Although these services are generally rendered *gratis*, their value is not negligible. Especially it is the travelling customer who can well understand their worth. From the moment he sets his foot on foreign soil he realizes that, even when alone in a strange land, he still has one valuable friend always ready to help him, namely, the local agent or correspondent of his bank at home.

OTHER AGENCY SERVICES—As representatives of their customers, some banks carry on correspondence with income-tax authorities. They obtain passports, travellers' tickets and secure passages for their customers; they redirect their letters, and in fact, do all they can to increase their usefulness to their customers.

Miscellaneous Services.

We shall now deal with the miscellaneous subsidiary services rendered by modern banks, *i.e.*, services in the performance of which the banker's position is not that of an agent for his customer. The chief among these are :—

(1) Receiving of deeds, securities and other valuables for safe custody ;

(2) Dealing in foreign exchanges ;

(3) Issuing of letters of credit, circular notes, traveller's cheques, etc.;

(4) Serving as referee as to the financial standing, business reputation and respectability of their customers ;

(5) Underwriting of loans raised by Governments, public bodies and trading corporations.

SAFE CUSTODY OF CUSTOMER'S VALUABLES.—Receiving of valuables such as negotiable securities, jewellery, boxes of plate, and documents of title to property, is not a recent addition to a bank's functions. Even the early goldsmiths in the City of London were familiar with this kind of business, and in fact, modern banking is but an offspring of this early safe custody business, from which it has originated. Even in ancient India, the money-lender was the only reliable agency for the safe deposit of cash, jewellery and other valuables. Being equipped with safes and strong rooms for the purposes of its business, the modern bank is naturally a very safe and convenient depository of valuables, as it is safeguarded against theft and fire (for application for safe custody of articles, see Appendix A, Form No. 43, *post*).

Forms of safe custody deposits. The articles lodged for safe custody are either locked up in a safe-deposit locker rented by the customer in the safe deposit vault, or put in a box or in an envelope sealed with the customer's recognizable seal to be kept by the bank for safe custody. The outside of the locker, envelope, packet or box left for safe custody bears, in bold letters, the name of the depositing customer. Generally in such cases, the banker is left without any precise information about the contents of the locker, or the box, if the key is kept by the depositor. The case is different when a customer leaves for safe custody some bearer securities, *e.g.*, bonds, with instructions to cut off the coupons and present them for payment on their due dates.

Receipt for safe custody. As a rule, the customer is required to sign the counterfoil of a special form of receipt, which is cut off from the safe custody receipt book and handed over to the customer in acknowledgment of the articles received by the banker for safe custody; see Appendix A, Form No. 44, *post*. The receipt generally contains a provision, making it obligatory on the customer to surrender it in person, giving the banker a due discharge at the time of taking delivery of the articles deposited for safe custody. If, however, the customer is unable to attend personally he is required to sign an order on the back of the receipt, instructing the banker to deliver the relative articles to the bearer of the receipt. The genuineness of the signature on the receipt surrendered by the customer or his agent, can be verified by comparing it with the signature on the counterfoil.

Register of safe custody securities. Where the banker is informed about the contents of the box or packet deposited, or, where the articles are simply handed over to the bank to be kept in safe custody, the particulars are entered as follows in the register of securities for safe custody:—

M. K. SHROFF, ESQUIRE, BAR-AT-LAW.

30, Hornby Road, Bombay.

Date.	Initials of the receiving Officer.	NOMINAL AMOUNT OF THE SECURITY	Description.	Number of Receipt issued.	How disposed of	Initials of the Surrendering officer.
12—3—1928	S. K. H. J. N. A.	Rs. 4,000	5% War Bonds, 1928	79	Returned 7th May 1933. Receipt No. 30.	S. K. H. J. N. A.
6—6—1928	S. K. H. J. N. A.	Rs. 3,000.	30 Indo-Burma Petroleum Preference Share Certificate No. 19073	79	....	....

Register of boxes in safe custody. Similarly, a register of boxes may be maintained, in which particulars of all locked boxes received for safe custody, together with their owners' names, may be entered. The outer description of each box, with its distinctive number, should also be noted in the register. As banks cannot afford to handle and assume responsibility for valuables, of the nature and value of which they have no idea nor any adequate means of determining the same, it is in their interests to commit the depositor in advance, as to the nature and value of the contents, and the terms on which they are to be handled. The bank cannot merely rely upon the records and statements of the depositor or his agent, who may themselves afterwards be parties to false and fraudulent claims against the bank. Where the key of the locker allotted to the customer in the bank's vault is kept by him, the banker should, besides protecting the contents of the locker against destruction and unlawful interference by third persons, conduct and operate his safe custody business in such manner as will perclude the box-renter from attributing to him the responsibility for losses or disappearances, resulting from his own carelessness or that of his deputies.

Banker as gratuitous bailee. In accepting articles for safe custody the banker's position is that of a bailee, *i.e.*, a person to whom goods are delivered in trust under a contract, and who is responsible for the custody and safe return of the articles deposited, according to the terms of the bailment. The modern English law, on the subject of liability of a gratuitous bailee in respect of the goods bailed to him, is thus enunciated in the under-mentioned case: "That he is bound to take the same care of the property entrusted to him as a reasonably prudent and careful man may fairly be expected to take of his own property of the like description" (*Giblier* v. *McMuller* (1869), L.R. 2 P.C. 317 (339)). It has been further held that a gratuitous bailee is bound in respect of the goods bailed, to use such skill as he really possesses (*Wilson* v. *Brett* (1843), 11 M. & W. 113 (115)).

Banker as bailee for reward. The standard of care required of a bailee for reward does not appear to be any higher, except in respect of common carriers and inn-keepers (*Searle* v. *Lakebick* (1874), L.R. 9. Q.B. 122). The law in British India expressly does away with the distinction between the liability of a gratuitous bailee and that of a bailee for reward. Section 151 of the Indian Contract Act, 1872 demands a uniform standard of care, namely, "as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed" in all cases of bailment. Section 152 of the same Act exempts a bailee from liability in respect of loss, destruction, or deterioration of the goods bailed, when he has taken the amount of care prescribed by section 151, and when no special contract exists between him and the bailor to make his liability absolute, that is, unaffected by any amount of care. Though the liability of a bailee can thus be enhanced by a special contract, there is difference of judicial opinion on the question, whether it can either be reduced below the standard laid down by section 151, or be completely negatived, by a special contract. While, according to Sankaran Nair, J., in *Sheikh Mahomad* v. *The British Indian Steam Navigation Co., Ltd.* (1908) 32 Mad. 95, at p. 120, a bailee may by special contract undertake a greater liability, he cannot by such means reduce the liability imposed by this section, it was held in a Calcutta case (*Jellicoe* v. *British India Steam Co.*, 10 Cal. 489), that it is open to the parties, by express contract, to restrict this liability even to the extent of wholly relieving the bailee from it. According to the English law a bailee for reward must show that degree of care which would ordinarily be expected of a person in that particular line of business or profession. The care which is ordinarily expected of a banker is certainly a high one, *e.g.*, the provision of an adequate strong room, taking of precautions to prevent thefts and frauds and care in the engagement of staff so as to ensure as far as possible that the bank employees are honest. The distinction between a bailee for a reward and a gratuitous bailee loses its importance if it can be proved, as no doubt it can be done, that a banker impliedly undertakes this service and is therefore a bailee for reward.

Banker's liability for negligence. Negligence, as we have already seen in an earlier part of this work, is an omission to do something which a reasonable man, guided by the ordinary considerations which regulate the conduct of human affairs, would do, or is the doing of something which a reasonable person, similarly circumstance, would not do. It may arise in many forms. Just as a doctor professing himself to be specially qualified in the art of healing others, can be held liable for negligence if he fails to show adequate skill or knowledge when attending on a patient, similarly, a banker who is a professional caretaker of his customer's valuables will be liable to him for any loss resulting from his negligence in safeguarding the articles.

A banker will render himself liable if the safe deposit vault is not strong enough and loss occurs from burglary, larceny or theft. Similarly, for loss arising from some mistake on his part, as for instance, when the entrance to the vault is left unlocked, or the arrangement for the guarding of it is unsatisfactory, or access to the vault is allowed to all and sundry. If the situation of the vault is unsafe or is exposed to danger from fire from a neighbouring chemical laboratory, workshop or a store of explosives or ammunitions, the banker will become liable for failure to take due precautions against such accidents. It may be mentioned, also, that when a banker holds

for safe custody, such bonds as are periodically drawn for payment and which he has undertaken to collect, he will be answerable for any loss arising, should he fail to present them for collection at the right time. He will incur no liability if they have been placed in a sealed envelope or in a safe deposit locker, the key of which is with the depositor and in respect of which the banker gave no undertaking to collect. In any case, the banker will be liable only when loss results from negligence on his part. He cannot, ordinarily, be held responsible for any loss or damage occurring to goods left with him for safe custody on account of their deterioration due to long storage. When a bank employee who has access to valuable documents deposited for safe custody steals them the bank will be held liable for loss. Where an agent or a representative of the customer is asked to be allowed access to the vault occasionally to examine or take out some of the valuables, the banker should accompany him to see that he does not act beyond the customer's authority.

Liability for conversion. Conversion is an unauthorized act of dealing with goods and chattels which are the property of another person. In other words, it is the performance of an unauthorized act which deprives another of his property whether temporarily or permanently. A banker who without authority, delivers to some third person, goods placed with him for safe custody, can be sued for conversion unless he can successfully raise an estoppel against the customer. Consequently, before handing over valuables to a third party, the banker should satisfy himself that the person is duly authorized by the customer to receive them. He can verify the genuineness of the customer's signature by comparing it with his specimen signature on the counterfoil of the receipt, issued to him at the time of the deposit. When he has some ground for suspecting the genuineness of the order demanding delivery of the articles, he should withhold their delivery for a reasonable period, in order to make the necessary enquiries. The danger of a wrong delivery can, however, be obviated, if the banker insists upon sending the articles through a member of the bank staff to the customer's own residence or place of business. In case the property deposited turns out to be stolen the banker may safely deliver it to the true owner, even without the customer's authority, after, of course, fully satisfying himself as to the third party's title thereto. Difficulties may arise on the death, lunacy or bankruptcy of the depositor and more so when the customer was one of the joint depositors.

General precautions. The banker must conduct and operate his safe deposit business in such a manner as will preclude his depositors from attributing to him the responsibility for any loss or damage to their deposits Care must be taken to avoid negligence or absent-mindedness on his own part as well as on the part of his agents or deputies. He should consequently take all such precautions as are necessary to protect the deposits against destruction, deterioration or unauthorized interference by outside persons. Such measures are calculated to help the banker in avoiding liability for damages, which he may otherwise be required to pay. The following are some of the general precautions which a banker may do well to adopt in his safe custody business :—

To ask for a declaration of the contents. The first important precaution a banker should take when he receives articles for safe custody is to ask the customer to declare the contents of the box or envelop together with their approximate value. Such an inventory acts as a

check upon a customer against his alleging any loss of articles not shown in the inventory. This will prevent him from exaggerating, in case of loss, the value of the articles lost. Ordinarily, any loss in the contents of a box or parcel deposited with a banker, may be attributed to the persons who handled them, or who were given access to the same deposit vault of the bank. If it can be proved, however, that in the discharge of certain services the bank employee had access to the articles in safe custody, or could handle them in any manner, at any time, during the period of their deposit, the loss may then plausibly be attributed to the bank. In this case, if the bank remained uninformed of the description, quantity and value of the things originally deposited, it will find it difficult to disprove the error or the falsity of the claim. The bank may, and presumably will, claim that under its careful watch and arrangement for preventing access to its vaults aud under its rigid rules and system of management, none of its employees had ever had any access to, or were ever associated in the handling of safe custody articles; all the same, the bank will find it hard to repel any false claim, if it preferred to remain uninformed of the contents and value of its safe custody deposits. If, on the other hand, the bank is possessed of such knowledge by means of an inventory regularly kept in the course of the business, it would become easy for it to refute all false claims.

To have exclusive possession. Preferably the banker should try to have the exclusive possession and custody of the property left with him for safe custody, and also the sole right of access to it during the period of its deposit with him, like an ordinary custodian, warehouse-man or a bailee. If the depositor is vested with the right of access to the custody, possession and control of valuables left in the banker's vault, the banker should avoid rendering those services which involve his handling them; but should he agree to do so, it is absolutely essential that he should take scrupulous care in safeguarding the valuables. Especially, when the customer deputes an agent for the purpose of removing specific articles from the box, the banker should see that the agent does not take away things other than those particularly authorized by the customer.

To ask for complete instructions for despatch of safe custody articles. When a banker decides to accede to the request of a customer who changes his residence from the city where he has rented a safe deposit locker in which he has placed valuables, or deposited his box for safe custody and who without attending the bank in person, asks the banker to send the contents of his locker or the box to his new residence, the banker should insist on the customer giving in writing a detailed list and value of the properties in the box if the customer has not already done so together with complete instructions as to the manner in which they are to be sent and the amount for which they are to be insured during transit. On receipt of the customer's necessary declaration and information, the banker may open the box, make an inventory of the contents, pack them carefully, all in the presence of a witness if possible, and send the package in accordance with the customer's instructions. A mere verbal message or communication on the telephone from the customer will not suffice and in no case should a banker offer to handle and assume even temporary custody of valuables, the amount and description of which he has no knowledge.

In addition to the general precautions stated above, a banker has to take certain other measures to avoid any risks that may arise when he is dealing with certain special types of customers.

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Care in case of joint deposits. When the articles are deposited by two or more persons jointly, the banker should get the specimen of the signature of each of them on the counterfoil of the safe deposit receipt. Some bankers have a special form for the purpose, requiring the persons, to whom access is authorized, to append specimens of their signatures; these persons may be the representatives of those whose rights of access may, either jointly or severally be dependent on the joint rental contract which the bank is obligated, at its peril, to carry out explicitly. Upon proper proof of the death of one or more of the joint renters, the bank will incur no liability in delivering the valuables to the survivor or survivors, if it has no notice that the parties held them as trustees (Appendix A, Form No. 45; *post*).

The articles deposited by trustees are under their joint control. Consequently, the banker will act upon instructions signed by all the trustees. In *Mendes* v. *Guedalla* (1862), 2 J. & H. 259, where one of three trustees, having the key of the box, containing bearer securities lodged with the bank for safe custody in the name of all the three trustees, had been authorized by his co-trustees to cut off the coupons half-yearly, in order to present them for payment, removed certain other articles from the box, it was held that, as the box was kept with the banker in trust for all the three trustees, "they ought not to have parted with it, or allowed more than the coupons to be taken out, without the authority of all the three trustees." The banker should take particular care to obtain the authority of all the trustees before he parts with, or disposes of in any way, the property deposited with him.

Delivery on death of depositor. In case of the death of the party depositing the valuables, the banker may deliver them to the personal representatives of the deceased on their producing probate or letters of administration, and obtain receipt from them. But when the will along with other valuables or documents, happens to be in the box lodged for safe custody, the banker may open it in the presence of a near relative of the deceased and hand over the will only to the executors, against their receipt. The remaining contents of the box should not be delivered to them, pending production of the probate or the letters of administration.

Dealings with agents and representatives. Lastly, the banker should be careful while dealing with agents, officials and representatives of companies, corporations, partnerships, and organizations of other kinds who purport to act as constituted attorneys. The banker must satisfy himself that their acts are within the proper scope of the authority, granted to them by their respective powers of attorney.

FOREIGN EXCHANGE BUSINESS—As a rule, Indian joint stock banks have not been doing this business on a large scale. Of late, however, some of them have begun to take an active interest in foreign exchanges; the Central Bank of India, for example, had started a subsidiary banking company, the Central Exchange Bank of India Ltd., with its head office in London. In view of the old and important connections which the already established Exchange banks working in this country have, no doubt, it was found an uphill task for this new Indian enterprise to get its due share of business in the financing of the foreign trade of this country and consequently the new bank went out of existence after a short life. It is understood that the recently started bank, the United Commercial Bank Ltd., is devoting particular attention to this class of business and under the able guidance of Mr. B. T. Thakur, its General Manager, is likely to acquire some share in the foreign bill business of this country.

We have already dealt with the position of the banker in relation to the payment and collection of both inland and foreign bills. Although we should like to deal with the subject at greater length, it is regrettable that the space at our disposal does not permit us to enter into the details of this branch of business; or even to enlarge upon it.

ISSUING OF LETTERS OF CREDIT, CIRCULAR NOTES, BANKER'S DRAFTS, TRAVELLER'S CHEQUES, ETC.—To increase its utility to its customers and to enable them to benefit by its credit, the modern bank is always ready to issue letters of credit, circular notes, banker's drafts, traveller's cheques, etc., for the convenience of its customers.

Letters of credit. A letter of credit is a document or order by a banker in one place, authorizing some other banker, acting as his agent or correspondent in another place, to honour the drafts or cheques of a person named in the document, up to the amount stated in the letter and charge the total amount of the drafts so honoured or payments so made to the grantor of the letter of credit. The particulars of all the drafts or cheques, drawn by the specified person against the credit, are required to be indorsed at the back of the letter of credit, so that it will be easy to find out how much of the credit allowed is utilized, and how much is outstanding.

Uses of letters of credit. To discuss the manifold forms of letters of credit and to enter upon all the uses to which they are put is impossible within the compass of this volume. We will, therefore, content ourselves by stating that international, commercial and social relations are helped considerably by the facilities provided by letters of credit to merchants and travellers. For example, when an importer in India gets his banker to issue a letter of credit with the undertaking to accept bills drawn by a merchant, say in America, up to the amount of the letter, the American merchant can have no hesitation in shipping his goods or merchandise, as he has the assurance of the issuing banker that the bills drawn under the letter of credit will be duly honoured. Upon the strength of the letter of credit, then, the American merchant ships the goods ordered, to the Indian importer and draws as per its terms, either sight or time bills upon the bank in India. The American exporter either discounts the bills he thus draws or hands them over to his banker in America for collection. The American banker dispatches the bills to his agent in India for presentment for acceptance or payment, as the case may be. Neither the American exporter nor the Indian importer need keep funds tied up even temporarily, for which they might find better or more profitable use in the meantime. In the same manner, letters of credit facilitate foreign travel by obviating the risks of loss of money involved in it. By their use, a person who travels abroad need not carry about him any large sum of money as he can obtain, as will be presently seen, such amounts as he may require during his visits to different countries.

Clean and documentary letters of credit. A letter of credit, as has been said, gives authority to whomsoever it is addressed to draw bills, according to its terms, on the bank issuing it, and includes a promise by the issuing banker to accept all bills so drawn up to the limit of credit. When the promise to accept is made conditional on the attachment of documents of title to goods, such as the invoice, the bill of lading, the policy of insurance, etc., the letter is known as a documentary letter of credit (see Appendix A, Form No. 46, *post*). It is clean and open credit where the promise is unconditional or without reference to the attachment of documents of

title to goods (see Appendix A, Form No. 46 (*a*), *post*). Clean and documentary letters of credit are issued in respect of mercantile transactions only. Before issuing a documentary letter of credit, bankers usually require, 10 to 30 per cent. of the limit to be placed on deposit by the customer besides creating a charge on the merchandise in respect of which the letter of credit is granted. Although clean letters do not require to have documents of title attached to bills drawn under them, it must not therefore be understood that such bills do not represent *bona fide* business transactions on the ground that documents of title are allowed to be dispatched direct to the consignees. When, however, a banker knows that his customer, whose standing has been good, requires a credit for a true business purpose, it is not rarely, that he is satisfied with an agreement on the part of the customer to maintain a sufficient credit balance or deposit sufficient securities so as to permit him to overdraw his account. Either arrangement is of advantage to the customer inasmuch as he need not part with the whole amount of the letter of credit. If, by its use, he overdraws on his current account, he will pay interest only on that part of the credit actually utilized by him.

Revocable and irrevocable letters of credit. In case of revocable credit the banker issuing it can cancel the authority at any time he chooses, but he will still be liable for bills negotiated before its cancellation. An irrevocable credit cannot be cancelled unless it has run its full course or unless its beneficiary agrees to such cancellation. The reader may come across the terms "confirmed" (see Appendix A, Form No. 46 (*b*), *post*.) and "unconfirmed" (see Appendix A, Form No. 46 (*c*), *post*) credit used synonymously for "irrevocable" and "revocable" credit; however, the expression "confirmed" and the "unconfirmed" should be strictly used in connection with credits opened by banks abroad when a local bank agrees to confirm them or to do otherwise.

Circular letters of credit. Circular letters of credit are pacticularly useful to tourists and travellers who may require money in the different countries which they intend to visit (see Appendix A, Form No. 47, *post*). They may be divided into two groups, traveller's letters of credit and guarantee letters of credit. A traveller's letter of credit takes the form of a request from the issuing bank to its foreign agents and correspondents to honour the beneficiary's drafts, on itself, when it undertakes to meet them on presentation. Customers usually pay cash down for letters of this kind, or have their current accounts debited with the amounts. In the case of guarantee letters of credit, the purchase-money is not usually paid cash down, the banker issuing them claims reimbursements of drafts as and when they are drawn. When issuing such letters the banker obtains a guarantee—whence the name—that reimbursements will be made on demand at the agreed rate of interest, or he may require sufficient security for the grant of the credit. A letter of credit of either order carries at its foot or upon its back, to be filled in by the cashing banker, such particulars as the date of payment, the name of the banker paying upon it, the name of the place where payment is made and the amount paid in words and figures. These particulars will help to prevent cashing bankers from exceeding the limit of the letter. For purposes of safety, a letter of indication (see Appendix A, Form No. 47 (*a*), *post*) is supplied with each letter of credit which has to be produced each time an amount is drawn in respect of it. The customer is usually required to put his signature to the letter of indication in the presence of the issuing banker and is warned, by a note at its foot, to keep it apart from the letter of credit, so that if the letter of credit should happen to fall into improper

hands encashment by forgery and false impersonation may become difficult, as the letter of indication is always required to be produced to prove the identification of the customer.

Credit with or without recourse. The credit under a letter of credit may be with or without recourse. Where the beneficiary of a letter of credit is the drawer of a bill and holds himself liable to the holder of a bill if dishonoured, the credit is said to be with recourse. In case he does not hold himself responsible, the credit is said to be without recourse.

Revolving credit. When the credit is issued for a fixed amount to be availed of within a fixed period a fresh credit is necessary after the credit has been fully availed of, but in the case of revolving credits the amounts are automatically renewed after the bills negotiated under them are duly honoured, *e.g.*, where the revolving credit is for £2,000 and a bill for £500 is negotiated under the said credit, as soon as the said bill is honoured the amount of the credit is automatically restored to its original amount of £2,000.

Precautions by banker negotiating a bill under a letter of credit. A banker who negotiates a bill under a letter of credit should satisfy himself on the following points: (1) That the letter of credit is genuine He should satisfy himself that the signature of the officer signing the letter on behalf of the issuing bank corresponds to the specimen signature in the possession of the negotiating bank. (2) That the period of its validity has not expired. As stated above, letters of credit are generally issued to hold good for a limited period—six months or more. (3) That the amount of the bill to be negotiated is within the unavailed of balance of the amount given in the letter of credit. As according to the terms of the letter of credit, every bank negotiating bills under the said credit has to make on the letter of credit, the necessary entry regarding the amount of the bill negotiated and its date, it is not difficult to ascertain the balance if any for which the letter of credit holds good. (4) That the terms of the letter of credit are satisfied. If the negotiating banker fails to satisfy himself in this respect he may have no claim against the bank which issued the letter of credit. (5) That the party whose bill the banker is asked to negotiate is the same as given in the letter of credit. The banker can satisfy himself in this respect by comparing the signature of the party issuing the bills with those given in the letter of indication or in any other manner he likes.

Circular notes. Circular notes (see Appendix A, Form No. 48, *post*) differ from circular letters of credit in that the former are for certain round sums, generally in the currency of the country of the issuing bank. On the reverse side of a circular note are instructions to the agents and correspondents of the issuing bank, giving the name of the holder and the number of the letter of indication (see Appendix A, Form No. 48 (*a*), *post*) supplied to him.

Traveller's cheques. Traveller's cheques (see Appendix A, Form No. 49, *post*) bear a striking resemblance to circular notes, with the exception that they do not require any letter of indication. Like the circular notes, they are generally drawn for certain round sums and are cashable at the current exchange rate. At the time of the issue of a traveller's cheque, the holder signs it at the place appointed for the purpose and he has only to sign it again in the presence of the banker to whom he presents it for payment. This signature must correspond with the signature already on the cheque, which serves to indentify the holder.

Banker's drafts. A banker's draft addressed by one bank to another or by one office to another of the same bank, is an order to pay a specified

sum to a named payee, or to his order. Although they bear close resemblance to cheques, they are not, in England, regarded as cheques when the drawer and the drawee are branches or offices of the same bank. In India, however, they can be treated as cheques, *vide* p. 108, *ante*. When the drawer and the drawee are in different countries, banker's drafts are more or less similar to letters of credit, the only difference being that whereas the full amount of a banker's draft has to be paid on presentation, a letter of credit allows the drawing of amounts up to the extent thereof.

ACTING AS REFEREES AS TO THE FINANCIAL STATUS, BUSINESS REPUTATION AND RESPECTABILITY OF THEIR CUSTOMERS—The great utility of this function of the modern bank is quite evident. Firstly, it is very helpful to businessmen, as it furnishes them with reliable and prompt information as to the financial standing of the people with whom they are either dealing or with whom they contemplate dealing. Secondly, by supplying this information banks enable the business community to avoid loss from giving credit to persons of little or no financial worth. The banker's position as a referee for the means of financial standing, etc., of his customers as well as the necessary precautions to be taken by him in that connection have already been dwelt upon, see pp. 39-42, *ante*.

UNDERWRITING LOANS RAISED BY GOVERNMENTS, PUBLIC BODIES, OR TRADING CORPORATIONS—It is not uncommon for joint stock banks to act as bankers to some local authority or other public body, and sometimes to manage the issue of a loan on their behalf, or, as in England, even for a foreign government. German banks are often members of stock exchanges, and as investment bankers, it is not uncommon in Germany for bankers to underwrite and distribute issues of stocks and bonds. Banks in India often act as bankers to local and municipal authorities or other public bodies, companies and corporations, and occasionally, also underwrite issues of Government loans and loans by local and municipal authorities besides industrial securities. There appears to be good scope for expansion of this kind of business in this country. It has now become customary, however, for governments of countries to entrust the management of their public debt to their respective central banking institutions.

CONCLUSION—The foregoing is at best only a brief resume of the innumerable services rendered by the joint stock bank which is making a supreme effort in placing at the disposal of its customers all resources and facilities which modern times have brought into existence, in order that it may live usefully to the community in general. It will not be regarded too much on our part if we claim that the modern bank is, after all, the best friend, philosopher and guide of the customer of whatever standing.

Paradoxical though it may appear, in view of the country's centuries old cultural and historical traditions, India is still in the economic sense, a young country with vast virgin resources and untapped potentialities for industrial and commercial development, waiting to be exploited; we are sure we are making no unreasonable claim, when we say, that nobody can have a better or more organic part in this pioneer work of national development, which is bound to proceed apace under progressive democratic institutions and self-government, than what our banks may have under the aegis of the newly founded Reserve Bank of India, in the supreme task of marshalling the country's capital and credit resources and of guiding them to best advantage along approved lines: therefore it will be no exaggeration to claim that India can be what her banks desire to make of her.

APPENDIX A

FORM No. 1

FORM OF STATEMENT TO BE PUBLISHED BY BANKING AND INSURANCE COMPANIES AND DEPOSIT, PROVIDENT OR BENEFIT SOCIETIES, BEING FORM G OF THE THIRD SCHEDULE OF THE INDIAN COMPANIES ACT, 1913, AS AMENDED BY ACT XXII OF 1936; SEE S. 136.

1 The share capital of the company is Rs............divided into.... ......shares of Rs............each.

The number of shares issued is.....................Calls to the amount of Rs. ....per share have been made, under which the sum of Rs.. ....has been received.

The Liabilities of the company on the thirty-first day of December (or thirtieth of June) were :—

Debts owing to sundry persons by the company.

Under decree, Rs.

On mortgages or bonds, Rs.

On notes, bills or hundies, Rs.

On other contracts, Rs.

On estimated liabilities, Rs.

The Assets of the company on that day were :—

Government securities (stating them), Rs.

Bills of exchange, hundies and promissory notes, Rs.

Cash at the Bankers, Rs.

Other securities, Rs.

1 If the company has no capital divided into shares, the portion of the statement ting to capital and share must be omitted.

FORM No. 2.

FORM OF BALANCE SHEET BEING FORM F OF THE THIRD SCHEDULE OF THE INDIAN COMPANIES ACT 1913 (AS AMENDED BY ACT XXII OF 1936; SEE S. 132).

..................................LIMITED.

Balance-Sheet as at..................19

CAPITAL AND LIABILITIES.	PROPERTY AND ASSETS.
CAPITAL— Authorised Capital......shares of Rs.....each ..	FIXED CAPITAL EXPENDITURE— (Distinguishing as far as possible between expenditure upon goodwill, land, buildings, lease-holds, railway sidings, plant, machinery, furniture, developemnt of property, patents, trade marks and designs, interest paid out of Capital during construction, etc., and stating in every case the original cost and the additions thereto and deductions therefrom during the year, and the total Depreciation written off under each head. Where sums have been written off on a reduction of capital or a revaluation of assets every balance-sheet after the first balance-sheet subsequent to the reduction or revaluation shall show the reduced figures, with the date of and the amount of the reduction made.)
(Distinguishing between the various classes of Capital.) Issued Capital......shares of Rs......each ..	
(i) Shares issued as fully paid up pursuant to any contract without payments being received in cash......shares of Rs.......each. (ii) Shares issued for payments in cash......shares of Rs.———each. Subscribed Capital......shares of Rs.......each ..	
Amount called up at Rs......per share .. .. *Less*—Calls unpaid— (i) due from Managing Agents .. .. .. (ii) due from others	PRELIMINARY EXPENSES .. .. COMMISSION OR BROKERAGE .. ..
Add—Forfeited shares (amount paid up). *Note.*—Where circumstances permit issued and subscribed capital and amount called up may be shown as one item, *e g.*, Issued and Subscribed Capital....shares of Rs...... each, Rs. paid up	(Commission or Brokerage paid for underwriting or placing or subscribing shares or debentures until written off.) DISCOUNT ALLOWED on the issue of shares or so much as has not been written off at the date of the balance-sheet .. ..
RESERVES .. .. DEBENTURES stating the nature of security	STORES AND SPARE PARTS .. .. LOOSE TOOLS .. .. LIVE-STOCK AND VEHICLES .. ..

FORM No. 2 (Contd.)

CAPITAL AND LIABILITIES—*contd.*	PROPERTY AND ASSETS—*contd.*
ANY SINKING FUND	
ANY OTHER FUND CREATED OUT OF NET PROFITS, including any develepemnt fund	STOCK IN TRADE .. .. (Stating mode of valuation, *e.g.*, cost or market value.)
ANY PENSION OR INSURANCE FUND	
PROVISION FOR BAD AND DOUBTFUL DEBTS ..	BILLS OF EXCHANGE .. ..
LOANS—	1[BOOK DEBTS] .. ..
(*a*) Secured—	(Distinguishing between those considered good and in respect of which the company is fully secured and those considered good for which the company holds no security other than the debtor's personal security, and distinguishing between debts considered good and debts considered doubtful or bad. Debts due by directors or other officers of the company or any of them either severally or jointly with any other persons to be separately stated)
(*i*) loans on mortgages or fixed assets	
(*ii*) loans on debentures	
(*iii*) loans from banks, stating the nature of security	
(*iv*) liabilities to subsidiary companies	
(*v*) other secured loans, stating the nature of security.	
(*vi*) interest accued on mortgages, debentures or other secured loans	
(*b*) Unsecured—	ADVANCES .. ..
(*i*) loans from banks	(Recoverable in cash or in kind or for vlue to be received, *e.g.*, Rates, Taxes, Insurance, etc., showing separately—
(*i*) fixed deposits	
(*iii*) short term loans	
(*iv*) advances by directors or managers and managing agents	(*i*) loans given to subsidiary companies .. ..
(*v*) interest accruing but not due and interest accrued and due	(*ii*) loans including temporary advances made at any time during the year to directors or managers of the company) .. .. ..
(*vi*) liabilities to subsidiary companies	INVESTMENTS .. ..
UNCLAIMED DIVIDENDS	(Showing nature of investments and mode of valuation, *e.g.*, Cost or Market value and distinguishing—
	(*i*) investments in Government or trust securities
LIABILITIES—	(*ii*) investments in shares, debentures or bonds (showing separately shares fully paid up and partly paid up) .. ..
For Goods supplied	
For Expenses	
For Acceptances	(*iii*) investments in shares, debentures or bonds of subsidiary companies .. .. ..
For Other Finance	(*vi*) immoveable properites .. ..
	INTEREST ACCRUED ON INVESTMENTS .. ..

1 The words " Book Bebts " in the right-hand column of this Form were substituted for " Book Debits " by s. 21 of the Indian Companies Amendment) Act (II of 1938).

FORM No. 2 *(Concld.)*

CAPITAL AND LIABILITIES—*contd.*			PROPERTY AND ASSETS—*contd.*		
ADVANCE PAYMENTS AND UNEXPIRED DISCOUNTS (For the portion for which value has still to be given, *e.g.*, in the case of the following classes of companies— Newspaper, Fire Insurance, Theatre, Club, Banking, Steamship Companies, etc.)			CASH AND OTHER BALANCES		
			Amount in hand		
			Balances with Agents and Bankers (in detail showing whether on deposit or current account, etc.) ..		
			Profit and Loss		
PROFIT AND LOSS..					
CONTINGENT LIABILITIES—					
Claims against the company not acknowledged as debts					
Money for which the company is contingently liable (Showing separately the amount of any guarantees given by the company on behalf of directors or officers of the company)					
Arrears of Cumulative Preference Dividends					

The information required to be given under any of the items or sub-items in this Form if not included in the Balance-Sheet itself shall be furnished in a separate Schedule or Schedules to be attached to and to form part of the Balance-Sheet.

FORM No. 3

Share Certificate.

Certificate No................ Shares..........

Share Capital......................divided into...............................in Preference Shares of..........each, Nos.........................in Ordinary Shares of..........each, Nos.............

This is to certify that............of..........................is the Registered Holder of...................of the above named ordinary Shares of...........each, numbered...........to................, all inclusive,............................ subject to the Memorandum and Articles of Association of the Company, and that each of the said shares is fully paid up.

Given under the Common Seal of the Company.
This..........day of....................19

} Directors.

, Secretary.

Note.—No transfer of any of the Shares comprised in this Certificate will be registered until the Certificate has been delivered at the Company's Office.

Registered Office

FORM No. 4

Registered Debenture.

No............ Rs............

The..............................Company, Limited.
Share Capital—Rs.
Offices

Issue of Rs....................Mortgage Debenture Bonds.
Ranking *pari pasu*.

Issued pursuant to Clause—of the Company's Memorandum of Association and Article No.........of the Company's Articles and a resolution of the Board (or Company in General Meeting) passed on the........day of..........19 .

The..............(hereinafter called the Company), in consideration of the sum of..........rupees paid to them by............of..............hereby covenant with the said.................. his executors, administrators and assigns, to pay to the said........................, his executors, administrators or assigns, on demand or without any demand, if, and when the principal moneys hereby secured shall in accordance with the conditions contained herein, become payable without demand, the sum of Rs............on presentation of this Debenture at the registered office of the Company, and the Company will in the meantime pay interest thereon to the registered holder for the time being at the rate of Rs..........per cent per annum by equal half-yearly payments on the.........day of..........and.........day of..........in each year, the first payment of interest to be made on the........... day of..........next. And the Company do hereby charge with such payments the undertaking, stock in trade, lands, premises, works, plant, property, and effects (both present and future) of the Company, and its uncalled capital for the time being; to the intent that this security and the other securities forming part of the above named issue of Rs............may rank equally as a first charge upon the said undertaking, stock in trade, lands, premises, uncalled Capital and other property and effects, and such charge is to be a floating security, but so that the Company is not to be at liberty to create any mortgage or charge or to confer any lien to rank equally with or in priority to the Debentures of this series, or to sell, mortgage, or deal with its Book or other Debts, or Securities for money otherwise than for the purpose of getting or realizing the same in the ordinary course of business. If this Debenture shall at any time hereafter be redeemed or paid off or satisfied, the same shall not be re-issued, while any of this series of Debentures, each for securing the principal sum of Rs..........shall remain outstanding or unsatisfied.

FORM No. 4—*Contd.*

A Register of these Debentures will be kept at the Company's Registered Office, wherein there will be entered the name, address, and description of the Registered Holder or Holders and particulars of the Debentures held by him or them respectively and of the date of registration. Such Register shall at all times during business hours be open to the inspection of the Registered Holder thereof, or his personal representative or any agent of such Holder or of such representatives.

The Registered Holder or Holders will be regarded as exclusively entitled to the benefit of this Debenture, and all persons may act accordingly, and the Company shall not be bound to enter in the Register notice of any trust, or to recognize any right in any other person save as herein provided.

The principal money and interest hereby secured will be paid without regard to any equities between the Company and the original, or any intermediate Holder or Holders hereof, and the receipt of the Registered Holder or Holders hereof for such principal money and interest shall be a good discharge to the Company for the same.

The Company may at any time hereafter give notice in writing to the Registered Holder or Holders hereof, his or their executors or administrators, of its intention to pay off such principal moneys hereby secured, and immediately after the service of any such notice, such principal moneys shall become payable.

The principal money hereby secured shall (without any demand being made therefor) become immediately payable in each of the following events, namely :-

(*a*) If the Company makes default for a period of one calendar month in the payment of any interest hereby secured;

(*b*) If an Order be made, or if a Resolution, whether requiring confirmation or not, be passed for the winding-up of the Company;

(*c*) If an execution or distress is levied or enforced upon or against any of the chattels or property of the Company and the same is not paid out within two days of the levying of the same.

(*d*) If the Company shall stop payment or shall cease to carry on its business;

(*e*) If a Receiver of the Company's undertaking or any part thereof shall be appointed.

At any time after the principal moneys hereby secured, or any part thereof, shall have become payable, the Registered Holder or Holders of this Debenture may, with the consent in writing of a majority in value of the Registered Holders of this series of Debentures, or of such of them as shall be outstanding, appoint by writing under his or their hand or hands, or in the case of a Corporation under its Seal, some person or persons to be a Receiver or Receivers of the property charged by these Debentures, and may fix his or their remuneration, and such appointment shall be as effective as if all the Holders of Debentures of the same issue, or of such of them as shall be outstanding, had concurred in such appointment, and a Receiver or Receivers so appointed shall, except so far as may be mentioned otherwise in his or their appointment, have power—

1. To take possession of the property charged by these Debentures;
2. To carry on or concur in carrying on the business of the Company,
3. To sell, lease, or let, or concur in selling, leasing or letting any of the property charged by these Debentures; and as to fixtures to sell or concur in selling the same: either attached to or separated from the hereditaments to which they are fixed;
4. To make any arrangement or compromise which he or they shall think expedient in the interest of the Debenture Holders;
5. To make calls, conditionally or unconditionally, on the Members of the Company, in respect of the uncalled Capital, with such and the same powers for that purpose, and for the purpose of enforcing payment of any so made, as are by the Articles of Association of the Company conferred on the Directors thereof in respect of calls authorized to be made by them and in the names of the Directors or in that of the Company or otherwise, and to the exclusion of the Directors' power in that behalf.

Given under the Common Seal of the said Company this....................day of ....One thousand nine hundred and..............

Directors

Secretary

FORM No. 5

FIXED DEPOSIT RECEIPT.

NOT TRANSFERABLE.

.Bank Limited.

No. X........

Received from....................the sum of............Rupees to be placed to his credit on DEPOSIT for............from................19........ Repayable on the....................19........Interest will be allowed at............per cent. per annum.

For and on behalf of..............Bank Ltd.

Manager.

Rs.............

Accountant.

N.B.—This receipt must be given up on repayment of the amount.

FORM No. 6

ACCOUNT OPENING FORM FOR INDIVIDUAL ACCOUNT.

................19

THE MANAGER,

.....................BANK LIMITED,

DEAR SIR,

Please open a.........................Account in my name in the books of the Bank. I agree to comply with, and be bound by the Bank's rules, for the time being, for the conduct of such account.

Kindly supply me with a pass-book, a cheque book and a paying-in-slip book.

Full name ....

Occupation ....

Address ....

Yours faithfully,

Signature.....................

Introduced by

Initials of
Manager or Accountant

N.B.—All alterations must be initialled.

Specimen Signature.

....

FORM No. 6 (a)

ACCOUNT OPENING FORM AND AUTHORITY. INDIVIDUAL TRADING UNDER A FIRM'S NAME.

....................19

THE MANAGER,

............................BANK LIMITED,

DEAR SIR,

I, the undersigned (1)..hereby request you to open a....................................Account for me to be called ....in the books of the Bank.

And I request and authorise you until I shall give you notice in writing to the contrary to honour all cheques or other orders which may be drawn on the said account or bills accepted or notes made on my behalf or on behalf of the said account provided that such cheques, orders, bills or notes are signed by...and I request and authorise you to debit such Cheques, orders, bills or notes to the said account with you whether such account be for the time being in credit or overdrawn.

I agree to comply with and to be bound by the Bank's rules for the time being in force for the conduct of such accounts.

Yours faithfully,

Cheques will be signed by ....

Mr....................................thus...

Mr....................................thus...

Introduced by..............................

All alterations must be initialled.

Initials of
Manager or Accountant

Specimen Signature (s).

(1) Here insert full Name and Address.

FORM No. 6 (b)

STATEMENT REQUIRED IN CASE OF HINDU CUSTOMERS.

To

THE AGENT,

.BANK LTD.

DEAR SIR,

I / We beg to inform you that all the money deposited in the Fixed Deposit Account / Current Account / Savings Bank Account standing in my / our name in your books is the personal or self-acquired property of myself / ourselves and is not the property of a Joint Hindu Family.

Yours faithfully,

FORM No. 6 (c)

FORM OF MANDATE OR AUTHORITY FOR A PERSON TO DRAW UPON ANOTHER PERSON'S ACCOUNT.

To

THE MANAGER,

.BANK LIMITED,

DEAR SIR,

I hereby authorise you to honour all cheques drawn on my account with you by........................whose specimen signature is given below, notwithstanding that such cheques may create an overdraft or increase it to any extent, and who is authorised also to make, draw and indorse and accept or otherwise sign any bills of exchange, promissory notes or other negotiable instruments and to discount the same with your bank or otherwise, and also to indorse cheques or other negotiable instruments of any kind.

This authority shall continue in force until I revoke it by a notice in writing delivered to you.

Yours truly,

Dated this.....................day of.............. .19 .

Specimen signature of the person authorised to sign .

FORM No. 6 (d)

FORM OF INDEMNITY RE. PAYMENT OF CONDITIONAL ORDERS.

THE MANAGER,

..........................BANK LIMITED,

DEAR SIR,

In consideration of your allowing me/us, or person/persons duly authorised by me/us, to draw drafts on you with receipts attached, I/we undertake that you shall have as against me/us in respect thereof the protection afforded by Sections 85 and 128 of the Negotiable Instruments Act, 1881, and that the signature on the receipt at the foot of such drafts shall have the effect of and operate as an indorsement within the meaning of the said Sections.

Yours faithfully,

.......................*Partner.*

........................19

FORM No. 6 (e)

INDEMNITY FORM FOR VERNACULAR SIGNATURES.

To

THE MANAGER,

..........................BANK LIMITED,

DEAR SIR,

In consideration of your bank allowing me/us to open a current account with the bank intended to be operated upon by cheques issued by you to me/us for such purpose and bearing signatures in other than Roman characters, I/we hereby agree that such account shall be kept on the condition that you shall be at liberty to charge me/us with payment on any cheques paid by you upon such account and I/we will hold myself/ourselves liable and you shall not be in any way responsible therefor notwithstanding —

(*a*) That such cheques may not have been drawn by me/us or

(*b*) That my/our signatures may be forged thereto, or

(*c*) That such cheques may have been altered or otherwise tampered with in any way whatsoever and I/we hereby further agree at all times hereafter to save, defend and keep your bank harmless and indemnified of and from all manner of actions, suits, claims and demands whatsoever and of and from all damages, costs and charges whatsoever which may at any time hereafter sustain, bear or be put to by reason or by means of your paying any cheques, however drawn, altered or tampered with, in respect of such account.

Yours faithfully,

Signed by....................................

after the contents had been fully explained to him or them.

Witness ....

Address ....

FORM No. 7.

AUTHORITY TO PAY DIVIDENDS TO BANKER.

No............ Date. .19

To

THE....................CO., LTD.,

GENTLEMEN, Re.

I request you to pay all dividends from time to time falling due or becoming payable on the above shares now or at any time standing in my name in the company's books to the.................Bank Ltd.,..................or order, whose receipt shall be your full and sufficient discharge.

Yours truly,

FORM No. 8.

AUTHORITY TO PAY LIFE PREMIUMS.

.19

THE.....................BANK LIMITED,

DEAR SIR,

I hereby request and authorise you, until you receive notice to the contrary in writing, to pay the premiums from time to time as they fall due, on the Policy of Insurance No. ....for Rs.................in the......................Insurance Company Limited and debit the same to my current account with your Bank.

Premium Rs. As. Pies only, due 19

Yours faithfully,

Signature.

FORM No. 9

ACCOUNT OPENING FORM AND AUTHORITY TO OPERATE UPON THE ACCOUNT BY AN ATTORNEY.

,19

No.

To

THE MANAGER,

BANK LIMITED.

DEAR SIR,

Under Power-of-Attorney granted to me on................................ by the.. registered as P/A No.......................in your books, I am authorised to open an account with your Bank.

Please open a Current Account in the name of.................................. in your books to be operated upon by myself or any person similarly authorised.

We agree to comply with and be bound by the Bank's rules for the time being in force for the conduct of such accounts.

Kindly supply us with a cheque book and pass book.

Yours faithfully,

Signature......................

Occupation....
and
Address ..

Introduced by:—

(Alteration must be signed by all the Signatories.)

Specimen Signature

Initials of Accountant or Manager.

Pass Book issued	
Cheque Book Issued	
C/R. Obtained	
Initial Deposit	
Standing Ins.	

FORM No. 10.

ACCOUNT OPENING FORM AND AUTHORITY TO OPERATE UPON THE ACCOUNT OF A PARTNERSHIP CONCERN.

To

THE MANAGER,

.... .BANK LIMITED,

DEAR SIR,

We the undersigned.......................................(all partners) carrying on business in co-partnership as........................under the name and style of............ ....hereby request you to open/continue a current deposit account for us in the name of the said firm of..................and authorize you to honour our respective signatures as under on behalf of our said firm.

We also request and authorize you until any one of us shall give you notice in writing to the contrary, to honour all cheques or other orders which may be drawn or bills accepted or notes made or receipts for moneys owing by you to us signed by any one of us or our Manager Mr................................on behalf of our said firm and debit such cheques, orders, bills, notes and receipts to our said firm's account whether such account be for the time being in credit or overdrawn.

We also request you to accept the endorsement of any of us or our Manager Mr...... ....on behalf of our said firm on cheques or other orders, bills or notes.

We agree to comply with and to be bound by the Bank's Rules for the time being in force for such accounts.

Yours faithfully,

Name.....
Address....

Specimen Signatures.

Mr... will sign
Mr... will sign
Mr... will sign

FORM No. 10 (a)

LETTER FROM PARTNERS OF A FIRM ADMITTING MEMBERSHIP OF AND LIABILITY FOR AMOUNTS DUE FROM FIRM.

THE MANAGER,

.BANK LIMITED,

DEAR SIR,

We beg to inform you that we, the undersigned, are the partners in the said firm of ....which has dealings with your bank. We jointly and severally undertake responsibility to the Bank for the liabilities of the firm with the Bank. The Bank may recover its claims from the estate of any or all of the partners of the firm.

FORM No. 10 (a)—*Contd.*

Whenever any change occurs in our partnership we undertake to inform the Bank of the same in writing and our individual responsibility to the Bank will continue until we receive from the Bank an acknowledgment of that letter and until all our liabilities to the Bank are discharged.

Yours faithfully,

To be signed here by each partner of the firm.

FORM No. 11.

LETTER FROM THE MANAGER OF A JOINT HINDU FAMILY TRADING CONCERN.

To

THE MANAGER,

............................BANK LIMITED.

DEAR SIR,

I hereby declare that I am Manager of the Joint Hindu family trading concern of Messrs................,...........composed of myself and my brothers......and that sons all dealings and transactions are being entered into by me as Karta and Manager of the joint Hindu family composed of the persons mentioned below. That although I am fully entitled as such Manager to deal with you as all the dealings are for the benefit of the Joint Hindu family, and all moneys are required for the purpose of the Joint family business and or family necessity and it is unnecessary to have any authority from the other members of the family, I have, for your satisfaction, got this letter duly signed by the other adult members of the family.

Yours faithfully,

Signatures of other adult members of the family.

1..
2..
3..
4..
5..

FORM No. 12.

ACCOUNT OPENING FORM AND AUTHORITY TO OPERATE UPON A JOINT ACCOUNT.

....................19

THE MANAGER,

.BANK LIMITED,

....

DEAR SIR,

We hereby request you to open in our names a...........................Account in the books of the Bank and we agree to comply with, and be bound by the Bank's rules for the time being in force for the conduct of such accounts. We also request and authorise

FORM No. 12—*Contd.*

you until any one of us shall give you notice in writing to the contrary to honour all cheques or other orders which may be drawn on any joint.......................... Account kept by us with you or bills accepted or notes made on our behalf signed by (1)................of us and to debit such cheques or orders or bills or notes to our Account with you whether such Account be for the time being in credit or overdrawn.

In the event of the death, insolvency or withdrawal of any of us the survivor or survivors of us shall have full control of any moneys then and thereafter standing to our credit in our Account with you and it is understood that all moneys now or hereafter standing to our credit in our Account with you shall belong to the Survivor or Survivors in the event of any of us dying during the Currency of the Account. It is further understood that if any one of us forbids payment of an Account (which is not payable to all of us jointly) the Account if in credit shall thereupon cease to carry interest and shall not be payable except on the discharge of all of us or the Survivor or Survivors.

We also request you to accept the endorsement of any one of us to cheques or other orders, bills or notes payable to us.

In consideration of your opening or of your continuing an Account or Accounts in the joint names of us, we the undersigned have jointly and severally agreed that should any such Account or Accounts at any time be overdrawn we shall jointly and severally be liable to you for any moneys for the time being owing to you thereon including commission and interest.

And we have also jointly and severally agreed that all moneys, securities or other moveable property (whether jointly or that of any or either of us jointly and severally, in or coming into your possession shall be and remain a security and shall stand charged for the payment of our joint indebtedness and liabilities to you from time to time.

Please furnish us with a pass-book and a book of..........cheque forms and note our signatures as under.

Yours faithfully,

Names in full, Occupations and Addresses.		
	....	Signature.................
	....	,, ...
	....	,, ...
	....	,, ...
	....	,, ...
	....	,, ...

Introduced by.........................

(Alterations must be initialled by all the Signatories.)

Initials of Manager or Accountant.

Specimen Signatures.

....

....

....

(1) "All," "Either," "Any one," "Any two," or as the case may be.

FORM No. 13

ACCOUNT OPENING FORM FOR LIMITED COMPANIES.

..........., ...19

To

THE MANAGER,

................................BANK LIMITED,

SIR,

At a meeting of the Directors of................Limited, held at................ the................day of................19...., the following Resolutions were passed.

1. "That an account be opened with the............Bank Ltd., at......

2. "That the Bank be instructed to honour all cheques or other orders drawn and to accept and act upon receipts for moneys deposited with or owing by the Bank on any account or accounts at any time or times kept or to be kept in the name of the Company with the Bank, whether any such account or accounts be for the time being in credit or overdrawn, provided such cheques, orders or receipts are signed by........... ....for the time being of the Company and countersigned by....................for the time being of the Company.

3. "That the Bank be instructed to honour all Bills accepted and Promissory Notes made on behalf of the Company at any time or times whether the account or accounts of the Company, be for the time being in credit or overdrawn provided such bills or notes are signed by ... .for the time being of the Company and countersigned by.........; ....for the time being of the Company."

4. "That..........be authorised to arrange with the Bank for advance to the Company by way of loan and overdraft from time to time and to charge any of the Company's property and securities as security therefor."

5. "That................be authorised to sign on behalf of the Company all documents and forms relating to such securities (in relation to deposit or withdrawal or otherwise), in such forms as may be required by the Bank and furnish any instructions, indemnities and counter indemnities which may be required by the Bank from the Company in connection with the Company's business."

6. "That the Bank be furnished with a list of the names of the Directors Secretary and other Officers of the Company and a copy of its Memorandum and Articles of Association and be from time to time informed by notice in writing under the hand of the Chairman of any change which may take place therein and which will entitle the Bank to act upon any such notice until the receipt of further notice under the hand of the Chairman."

7. "That these Resolutions be communicated to the Bank and remain in force until notice in writing be given to the Bank by the Chairman of the Company."

In pursuance whereof we request that a current account be opened in the books of your Bank in the name of the Company, and we certify that the above Resolutions have been duly entered in the Minute Book and signed therein by the Chairman and are in accordance with the Articles of the Company and that the Company is a private-public Company.

On behalf of the Company we hereby agree to comply with and be bound by the Bank's rules for the conduct of accounts with it.

....

Dated................19....

Yours faithfully,

Chairman.

Secretary.

FORM No. 13 *Contd.*

Pass Book Issued		Specimen Signatures.
Cheque Book Issued		....
C/R. Obtained		....
Initial Deposit		....
Standing Ins.		....

FORM No. 14.

MANDATE OR AUTHORITY TO OPEN AN ACCOUNT FOR SOCIETY OR CLUB, AND OPERATE UPON THE SAME.

To

THE MANAGER,

BANK LIMITED,

Copies of the Resolutions passed by the..... ....of the................at their meeting held on the..............day of ....19 .

1. "That the................Bank, Limited, be and are hereby appointed. Bankers to the.................................
2. "That all cheques on the banking account be signed and all bills, notes and other negotiable instruments be drawn, accepted, and made on behalf of the ....by............Secretary or any............or more of the members of the committee whose specimen signatures are given below.
3. "That cheques, bills, notes, and other negotiable instruments payable to the............may be endorsed for the............by any one or more of the persons mentioned in the Resolution No ....or by the Secretary of the...........for the time being
4. "That a copy of the Resolutions (under the Common Seal and) signed by the Chairman be handed to the Bank together with specimens of the necessary signatures"

I certify that the Resolutions of which the above are copies, were fully passed at a meeting of the............held on the........day of........19 .

As witness (the Common Seal (1) of the ....and) the signature of myself as Chairman of the said meeting, this........day of........19

........................Chairman.

Countersigned by...........................Secretary.

Seal"

The following are the signatures of the persons mentioned in the above resolutions:—

1.......................

2.......................

3.......................

(1) Strike out words in the brackets where there is no seal.

FORM No. 15

ACCOUNT OPENING FORM AND AUTHORITY FOR TRUST ACCOUNTS.

P/A. No. ....

Dated................19.

To

THE MANAGER,

.... BANK LIMITED,

DEAR SIR,

Please open a current account in your bank in the name of...........The account will be operated upon by (1)................................... of the trustees, who have been authorised by the Trust Deed dated......................registered

A copy of the said Trust Deed duly certified is sent herewith. In future, if any change is required in the names of the operators of the account, it will be effected by a resolution of the Board of Trustees and you will be informed accordingly, in writing by all the trustees and you will allow such persons to operate upon the account.

We agree to comply with and be bound by the Bank's rules for the time being in force for the conduct of such accounts.

Yours faithfully,

Names in full Occupations and Addresses.		
....	Signature	....
....	,,	....
....	,,	....
....	,,	....
....	,,	....
....	,,	....

Introduced by ....

(Alterations must be initialled by all the Signatories.)

Specimen Signature.	Initials of Manager or Accountant.
....	....
....	....
....	....

Pass Book Issued	
Cheque Book Issued	
C/R. Obtained	
Initial Deposit	
Standing Ins.	

(1) "All", "Either", "Any one", "Any two" or as the case may be.

FORM No. 16

FORM OF PAYING-IN SLIP.

.... BANK LTD.

..........19

Received to the Credit of..........

....

....

the sum of Rupees..........

....

....

Rs..........

By Cashier..........

Ledger Folio ....

	Rs.	A.	P.
Notes @ Rs. 10,000 each	......	..	..
„ @ „ 1,000 „	......	..	..
„ @ „ 500 „	......	..	..
„ @ „ 100 „	......	..	..
„ @ „ 50 „	......	..	..
„ @ „ 10 „	......	..	..
„ @ „ 5	......	..	..
Gold	......	..	..
Silver	......	..	..
Copper	......	..	..
(Cheques as per particulars overleaf).			
TOTAL Rs.			

Cashier..........

.... BANK LTD.

..........19

Paid to the credit of..........

....

the sum of Rupees..........

....

....

By..........

N.B.—Customers are advised that the Bank reserves the right at its discretion to postpone payment of Cheques drawn against uncleared effects which may have been credited to the account.

Reverse side of above Form.

PARTICULARS OF CHEQUES.

DRAWEE.	Rs.	as.	ps.

FORM No. 17

CONFIDENTIAL INQUIRY AS TO THE STATUS OF A CUSTOMER.

THE..................BANK LIMITED.

No............

....

Date..................19

To

....

....

DEAR SIR,

We shall be much obliged if you will favour us with an opinion as to the means, standing, and respectability of the undermentioned.

Any information you may favour us with will be treated as strictly private and confidential.

Name...............................

Designation........................

Address.. ....

Yours faithfully,

....

Manager.

FORM No. 17 (a)

FORM OF REPLY TO A CONFIDENTIAL ENQUIRY.

Private and Confidential.

....BANK LIMITED,

... .

....

No..........

To

....

....

....

DEAR SIR,

As desired by you in your letter of the.. ...., the enclosed report is being communicated to you in the strictest confidence and without responsibility or guarantee on the part of this bank or any of its officers.

This letter is sent on the condition that the name of this bank will not be disclosed in the event of our report being passed by you.

Yours faithfully,

....

Manager.

FORM No. 18

FORM OF LETTER ENCLOSING CHEQUE BOOK WITH FORM OF RECEIPT ATTACHED.

BANK LTD.

Dated................

DEAR SIR,

As desired in your letter of................we have sent you separately cheque book bearing Nos.....................and we shall be glad if you will acknowledge receipt of same in the form below to confirm safe receipt of the book by you.

Yours faithfully,

For . .Bank Ltd ,

Manager.

NOTICE: –Customers are requested to count the leaves of the cheque book before using the same.

Dated.

Messrs.......................Bank Ltd.

DEAR SIRS,

I am in receipt of your letter of............and am pleased to inform you that the cheque book sent separately has duly come to hand.

No.............. Yours faithfully,

FORM No. 19

SPECIMENS OF CIRCULAR LETTERS TO PROSPECTIVE CUSTOMERS.

The First Bank of Lemon Cove.

"Both men and money are at their Best when Busy."

...............Prosperity Proverbs.

More than 300,000,000, of the country's cash is carried around in pockets or secreted away in old stockings, tin-cans, mattresses and other hiding places.

It is idle money.

Even a small portion of this invested in Government Promissory Notes would bring them back to par. Deposited in Banks it would inject new life into the industry, benefiting every one in the country.

Don't let your money lie idle.

Yours truly,

Vice-President.

FORM No. 19(a)

FIRST NATIONAL BANK OF REDLANDS.

Mr. J. V. ROWAN,
827, *Darwin Ave.*,
Flint, Mich.

DEAR SIR,

Somehow, someday, each and every one of us would like to feel that our daily bread did not come wholly from our daily efforts,—that there is a sum of money invested and bringing in an income upon which we can draw.

Down in our hearts we know, too, that the SOMEHOW is by earning and saving money regularly, and the SOMEDAY will never come unless we make a start.

Why don't you decide NOW to start saving NOW?

We will help you in every possible way.

Any sum you have to deposit will be acceptable. We will add interest at the rate of 4 per cent. per annum, thereby helping your savings to grow.

Won't you come into the Bank at your first opportunity and open a savings account even if it is only for $1?

Very truly Yours,
Vice-President.

FORM No. 19(b)

FIRST BANK OF REDLANDS.

Mr. J. V. ROWAN,   April 23, 1922.
827, *Darwin Ave.*,
Flint, Mich.

DEAR SIR,

"After A While."

So many people think they will begin to save "after a while." In the meantime they go on exercising the spending habit.

It is not the money that you SPEND now that will make you comfortable by and by. It is the money you SAVE now and during all the "nows" of your producing years.

Experience has shown that saving must be practised to be really successful. Once it is established as a habit, it becomes easy.

This bank will be glad to help you to save by suggesting various plans of saving—plans used successfully by many of our depositors.

Any officer of the Bank will be glad to talk with you if you will be kind enough to call.

Yours very truly,
Manager.

These letters have been taken from Revised Bank Letters by W. R. Morehouse and F. A. Stearns.

FORM No. 20.

SLIP FOR RETURNING UNPAID CHEQUES.

Cheque No.............

Returned for Reason No.

1. Effects not yet cleared (please present again).
2. Not arranged for.
3. Payee's endorsement required.
4. Payee's endorsement irregular.
5. Payee's endorsement illegible.
6. Refer to Drawer.
7. Drawer's signature differs from specimen filed in this office.
8. Endorsement requires Bank's guarantee.
9. Alteration requires drawer's signature in full.
10. Cheque is post-dated.
11. Cheque is out of date.
12. Exceeds arrangement.
13. Amount in words and figures differs.
14. Crossed cheque must be presented through a Bank.
15. No advice.
16. Payment stopped by the Drawer.
17. Full cover not received.
18. Vernacular endorsement requires confirmation.
19. Mutilation.
20. Payment countermanded by Telegram / Telephone and postponed pending confirmation.
21. ....

........................Bank Ltd.
....
Dated....................19

Agent. / *Chief Accountant.*

FORM No. 21.

APPLICATION FOR ADVANCE.

Branch....*Mockton-on-Sea.*
Name of the customer....*Charles Richard Roe.*
Particulars of business of Applicant....80, *High Road, Mockton, Ironmonger.*
General character of customer....*Middle-aged and successful businessman.*
Date when account was opened....*July,* 1904.
Introduced by....*Henry Doe, Brother-in-Law.*
Has he any other connection with the bank?....*His brothers-in-law have good accounts.*
Purpose stated for which advance is required....*Buying freehold of* 90, *Elm Street for his daughter who will shortly be married.*
Proposed terms....1% *above Bank Rate..minimum* 5%..*commission* £10 : 10 *p.a.*

FORM No. 21—*Contd.*

Advance.		At present running.	Proposed increase.	Total
Discount of Bills and Promissory Notes	..	*Nil.*	*Nil.*	*Nil.*
Overdrafts	..	*Nil.*	£1000	£1000
Loan	..	*Nil.*	*Nil.*	*Nil.*
Total	..	*Nil.*	£1000	£1000

Contingent liability on Guarantees and Endorsements....*£420 on trade bills discounted for Henry Doe*

Securities.		For Present Advance.	Proposed Securities for increase.	Total.
Discount of Bills and Promissory Notes	..	*Nil.*	*Nil.*	*Nil.*
Stock Exchange Securities	..	*Nil.*	£500	£500
Guarantees or other Collateral	..	*Nil.*	*Nil.*	*Nil.*
Leasehold, Freehold, or Copyhold ..	..			
Land and Building	..	*Nil*	£800	£800
Miscellaneous	..	*Nil.*	*Nil.*	*Nil.*
Total..	..	*Nil*	£1300	£1300

Particulars of Customer's Account.

DEPOSIT ACCOUNT.			CURRENT ACCOUNT.			
Maximum.	Minimum.	Average.	Maximum.	Minimum.	Average.	Turnover.
£670	£320	£480	£320	£120	£270	£3090

Manager's observations.....*Although Mr. Roe has a balance of £455 on Deposit Account and £157 on Current Account, he states that he will require all the available cash at his disposal to set up a branch shop, he is contemplating opening in Broad Street.*

Passed by,

O. Y. NOLAN,

Managing Director.

Signature of Manager,

A. L. Bank.

FORM No. 21—*Concluded.*

DETAILS OF SECURITIES NOW OFFERED.

1.	BILLS OF EXCHANGE AND PROMISSORY NOTES . . . . Have any bills been previously dishonoured? *No.* Are there any indications of redrawing? *No.*	*Nil.*
2.	STOCK EXCHANGE SECURITIES . . . . Particulars. . . . . *£500 5% War Loan* 1929-41 *regd.* . . . . If registered state whether to be transferred into the names of the Bank's nominees. . . . . *u/n of Mr. Dilly and Mr. Dally.* Value, if quoted at what price. . . . 101⅛=*£500*. . . . . If unquoted, has brokers' opinion been taken as to their value?	*£500/-*
3.	GUARANTEES OR OTHER COLLATERAL . . . . Particulars. . . . . Relation of guarantor to customer.	*Nil.*
4.	LEASEHOLD, FREEHOLD, OR COPYHOLD AND BUILDING . . . . . . Address. . . . 90, *Elm Street, Mockton-on-Sea.* Particulars. . . . *Good class residential villa, freehold.* Manager's valuation for purpose of this advance. . . . *£600.* Surveyor's valuation. . . . *£1100 (Dun, Brown) being bought by Mr. Roe for £1000.* Assessed to Rates at . . . . *£900.* If let annual rental. . . . . *£105* Rates. . . . *£35 (paid by tenant)* . . . . Ground Rent. . . . . *£5* Net Rental. . . . *£85*. . . . *value at years' purchase £850.* Insured against fire in. . . . *Atlas Fire Insurance Co. £1000* If in Land Registry Area, registered with what title? . . . . Or has title been abstracted and verified? Wait and See *Mr. Roe will give bank a legal mortgage if necessary* Is there any record of any prior mortgage? *No.*	*£800/-*
5.	MISCELLANEOUS	*Nil.*
	Total estimated value of Securities	*£1300*

Form taken from "English Banking Methods" by Minty, pp. 291-2.

FORM No. 22

LOAN APPLICATION FORM.

To

. . . . BANK LTD,
. . . . OFFICE

Applicant's name (in full). . . . .
Names of Partners in case of a firm. . . . .
Father's name and caste. . . . .
Occupation with Income. . . . .
Residence and present address. . . . .
Amount required. . . . .
Period and purpose for which required. . . . .
. . . .
How repayment is proposed. . . . .
. . . .
Whether he applied to any of the Branches, if so, with what result? . . . .
. . . .
Any other particulars. . . . .

Nature, Extent and Particulars of Security offered :—

(1) . . . .
(2) . . . .
(3) . . . .
. . . .
. . . .

FORM No. 22—*Contd.*

Rules relating to Security.

1. If house or landed property is offered as security, the (*a*) nature (*b*) locality, (*c*) previous encumbrances, (*d*) measurement, (*e*) value, (*f*) title and any other particulars necessary should be clearly given.

2. When stock-in-trade, goods and commodities are offered (*a*) particulars, (*b*) condition, (*c*) net value, (*d*) market value, and (*e*) margin to be kept, should be mentioned.

3. When Government paper and debentures are offered (*a*) nature, (*b*) rate of interest, and (*c*) year, etc., should be given.

4. If jewellery, *i.e.*, gold is offered its weight, value and margin should be given. It should also be given if the cashier has tested it.

5. When shares of a company are offered the (*a*) name of the company, (*b*) number of shares, (*c*) market value, (*d*) amount paid on each share should be mentioned and the last balance sheet shown if necessary.

6. In case of personal security, name, position and worth of the surety should be stated.

7. If a life policy is offered the (*a*) amount of policy, (*b*) name of the company, (*c*) premium, (*d*) surrender value and (*e*) due date of the policy should be given. Will the policy be assigned to the Bank ?

Statement of Moveable and Immoveable Property of the Applicant

Station.	Locality.	Particulars of property.	Approximate value.	REMARKS.

Statement of Previous Liabilities.

Station.	Name of creditors and addresses.	On what security.	Amount.	REMARKS.

FORM No. 22—*Concluded.*

$\frac{\text{I}}{\text{We}}$ hereby declare that $\frac{\text{I}}{\text{we}}$ have read the rules and that the answers given above are true and $\frac{\text{I}}{\text{we}}$ hold $\frac{\text{myself}}{\text{ourselves}}$ personally liable if any answer turns out to be wrong.

Place........................
Dated........................19

Signature..............
Designation and Address.

Rules relating to Loans.

1. The Bank grants loans of Rs. 100 upwards on security of Government Paper, Jewellery, and other good securities.

2. Promissory Notes bearing one or more endorsements, if approved, are discounted.

3. Advances sanctioned, but not taken up by the borrower within one moth of sanction will be considered as cancelled.

4. A half-yearly incidental charge of Re. 1 is made upon each Loan and Pro-note Account.

5. Compound interest will be charged after every half-year.

6. The Bank has a right to adjust the whole or part of the amount due to the Bank from the funds to be paid to the constituent from whatsoever account.

FORM No. 23.

FORM OF GUARANTEE FOR ONE CUSTOMER BY ONE SURETY.

To

THE MANAGER,

.... BANK LTD.,

GENTLEMEN,

In consideration of your opening (or continuing) an account with........of........ (hereinafter called "the customer") (*Clause* 1) I..................of.................. hereby agree to pay and satisfy to you two days after demand up to the amount hereinafter mentioned all moneys and liabilities already advanced, paid, or incurred on such account, or which you may at any time advance, pay, or incur to or for the use, or accommodation of or on the credit of the customer (whether on current account or by way of opening or continuation of any new account special or otherwise, or by the discount of, or otherwise in respect of, bills of exchange, promissory notes, or other negotiable securities, drawn, accepted, or indorsed by him, or otherwise howsoever), together with all interest, discount, commission, and other banking charges, law and other costs, charges and expenses, which may be or may become payable in connection therewith: Provided nevertheless that my liability on this guarantee shall not exceed in the whole the sum of Rs.............and interest thereon at the rate of........per cent. per annum from the date on which demand for payment shall have been made by you upon me.

And I further agree as follows:—

(*Clause* 2). This guarantee shall be a continuing guarantee and in full force until three calendar months after I shall have given or sent to you notice in writing of my intention to discontinue and determine the same, and shall have paid to you all moneys up to the limit of my liability due at the expiration of such notice, and in the event of my dying

FORM No. 23—*Concluded.*

or becoming under disability the liability of my executors, administrators, or legal personal representatives and of my estate shall continue until the expiration of three calendar months' notice in writing given you by such legal personal representatives to determine this guarantee; and you shall be at liberty on receipt of such notice at any time within the three calendar months to open a fresh account with the customer, and to appropriate thereto all payments subsequently made to you by him and not expressly appropriated by him to the old account without prejudice to my said liability to the extent aforesaid.

(*Clause* 3). You shall in any case be at liberty, and without my further assent or knowledge at any time to grant to the customer or any person liable with or for him, whether as guarantor or otherwise, any time or indulgence, and to determine, enlarge or vary his credit, and to vary, exchange or release any other securities held or to be held by you for or on account of the moneys intended to be hereby secured or any part thereof, and to renew any bills, notes, or other negotiable securities, and to compound or make any other arrangements with him, or any person so liable with or for him, as you may think fit, without discharging or in any manner affecting my liability under this guarantee.

(*Clause* 4). If the customer shall become bankrupt or insolvent or enter into any arrangement or make any composition with his creditors, you may (notwithstanding payment to you by me or any other person of the whole or any part of the amount hereby guaranteed) rank as creditors and prove against his estate for the full amount of your claim or agree to and accept any composition in respect of the same, and you may and shall receive and retain the whole of the dividends, composition or other payments thereon, to the exclusion of all my rights as guarantor for the customer in competition with you, until your claim is fully satisfied; and I will not, by paying off the sum guaranteed or any part thereof, or upon any other ground, prove or claim to prove in respect of the sum guaranteed for any part thereof, until the whole of your claim against the customer has been satisfied.

(*Clause* 5). To the intent that you may obtain satisfaction of the whole of your claim against the customer I agree that you may enforce and recover upon this guarantee the full amount hereby guaranteed and interest thereon notwithstanding any such proof or composition as aforesaid, and notwithstanding any other guarantee, security or remedy, guarantees, securities or remedies, which you may hold or be entitled to in respect of the sum intended to be hereby secured or any part thereof, and notwithstanding any charges or interest which may be debited in your account current with the customer, or in any other account upon which he may be liable.

(*Clause* 6). Notwithstanding anything hereinbefore contained this guarantee shall extend to all accounts of the customer whether the same are his solely, or are accounts on which he is or may become liable jointly, in any manner whatsoever, with any company or person or persons, and in whatever name or firm the same may stand: and this guarantee shall not be affected by any change in the constitution of the bank, its successors or assigns, or by its absorption of or by, or its amalgamation with, any other bank or banks.

As Witness my hand this............day of............19.....

Witness to the signature of the..

above named..... ....

• Name and address and occupation of Witness.

FORM No. 23 (a)

JOINT AND SEVERAL GUARANTEE FORM FOR ONE CUSTOMER BY TWO OR MORE SURETIES.

(*Clause* 1). [*As in Form No.* 23, *except that it commences.*]
' We hereby jointly and severally agree................'

(*Clause* 2). This guarantee shall be a continuing guarantee, and in full force until three calendar months after each of us shall have given or sent to you notice in writing of our intention to discontinue and determine the same, and shall have paid to you all moneys, up to the limit of our liability due at the expiration of such notice, and in the event of all or any of us dying or becoming under disability the liability of our estates and of our executors, administrators or legal personal representatives shall continue until the expiration of three calendar months' notice in writing to determine his guarantee shall have been given to you by each of us or by the executors or administrators or legal personal representatives of the person or persons so dying or becoming under disability; and you shall, etc., etc.

(*Clauses* 3, 4, 5 *and* 6). [*The same as in Form* No. 23 *with the necessary modifications.*]

(*Clause* 7). You shall also be at liberty to release or discharge any of us from the obligations of this guarantee, or to accept any composition from or make any other arrangements with any of us without thereby prejudicing or affecting your rights and remedies against the other or others of us.

FORM No. 23 (b)

FORM TO COVER A FIRM'S ACCOUNT.

(*Clauses* 1 *to* 5). *As above, with the necessary modifications. Clause* 1 *should contain all the names of the members of the firm.*

(*Clause* 6). Notwithstanding anything........................and in whatever the name or firm the same may stand and this guarantee shall continue in force and be applicable, notwithstanding any change in the partners composing the firm, by the death or retirement of any of the present or any future partners; or by the accession of any new partner or partners; and this guarantee shall not be affected................

[*The remainder as in Form No.* 23].

FORM No. 24

PROMISSORY NOTE PAYABLE ON DEMAND.

....

Rs. 100 ....19....

On demand, I promise to pay to............or order the sum of one hundred rupees for value received.

Sd/- M. G. Singh | Stamp.

(Signature across the Stamp).

FORM No. 24 (a)

PROMISSORY NOTE PAYABLE AFTER DATE.

....

Rs. 200 ....19....

Two months after date I promise to pay to........................or order the sum of two hundred rupees for value received.

Sd/- G. Govind Rao | Stamp.

(Signature across the Stamp).

FORM No. 24 (b)

PROMISSORY NOTE PAYABLE AFTER DATE WITH INTEREST.

....

Rs. 300. ....19....

Three months after date I promise to pay the.......................Bank Ltd., or order, at their................Branch, the sum of rupees three hundred with interest thereon at 6% per annum until payment.

Sd. G. S. Sodhi. | Stamp.

(Signature across the Stamp).

FORM No. 24 (c)

PROMISSORY NOTE WITH JOINT SIGNATURES.

....

.................19....

Rs.....................

On Demand we promise to pay to.........................or order the sum of one hundred rupees for value received.

Sd/- G. Govind Rao.

Sd/- G. S. Sodhi.

FORM No. 24 (d)

PROMISSORY NOTE WITH JOINT AND SEVERAL LIABILITY.

Rs............. ....19....

We jointly and severally promise to pay *on demand* to......................... ....Bank Limited, or order, in their office at.................. or.......................Branch, the sum of Rupees........................... .... for value received, with interest thereon at the rate of........per cent. per annum ove the Reserve Bank of India rate with a minimum rate of............per cent. per annun from this date until the date of *payment in full* with............rests.

Signature.......................

Full Address.............................. | Sign over Stamp.

FORM No. 24(e)

PROMISSORY NOTE PAYABLE ON DEMAND WITH INTEREST.

....................Office.

....................19...

Rs....................

On demand, I promise to pay......................Bank, Limited, or order in their Office at................of................Branch the Sum of Rupees...for value received together with interest at the rate of......per cent. above Reserve Bank of India rate, subject to a minimum rate of......per cent. per annum from this date till date of payment in full with. ....rests.

Signature........................

Full Address...........................

Stamp.

Kindly sign across the Stamp.

FORM No. 25

SPECIMEN FORMS OF BILLS OF EXCHANGE.

....

....

Rs. 100.

On demand pay Mr.................................or order the sum of rupees one hundred for value received.

To....................

Sd/- M. Jodh Singh

....

Stamp.

2.

Rs. 50

....

....

On presentation pay Bearer the sum of fifty rupees.

To...........................

Sd/- R. M. Patel

....

Stamp.

3.

Rs. 100.

....

....

One month after date pay to the order of................................the sum of one hundred rupees for value received.

To.....................

Sd/- M. G. Bhagavan.

....

Stamp.

FORM No. 25—*Concluded.*

....

....

Rs. 100.

One month after sight pay to me or my order One hundred rupees for value received.

To ....

....

Sd/- Ramlal

Stamp.

FORM No. 25(a)

PROTEST OF A BILL FOR NON-ACCEPTANCE.

On this the........day of...........One thousand nine hundred and.........at the request of *A.B.*, of............, merchant, and holder of the original bill of exchange, a true copy of which is on the other side written (*or is underwritten*), I,..............of the said City, Notary Public by royal (*or lawful*) authority duly admitted and sworn, did produce and exhibit the said original bill of exchange to............on whom it was drawn at (*his address*) for acceptance, and demanded acceptance thereof to which he replied that it would not be accepted at present (*or the answer given*). Wherefore, I, the said Notary, at the request aforesaid did protest, and by these presents do solemnly protest against the drawer of the said bill of exchange and all other parties thereto, and all others whom it doth or may concern, for exchange, re-exchange all costs, damages, charges and interest already incurred and to be hereafter incurred by reason of the non-acceptance of the said bill of exchange. Thus done and protested at............in the presence of.............& ....witnesses.

Dated this..........day of...........One thousand nine hundred and........ which I attest.

....

Notary Public.

FORM No. 25 (b)

ADVICE OF NON-ACCEPTANCE OR NON-PAYMENT OF A BILL.

No..................

To

Dated............19

Messrs....................................

....

....

DEAR SIRS,

We have to advise you that the following bills on which you appear as case in need $\frac{\text{presented to the drawees}}{\text{fall due}}$ on............for $\frac{\text{acceptance}}{\text{payment}}$ remains $\frac{\text{unaccepted}}{\text{unpaid}}$. We shall appreciate if you take up the matter with the drawees and have the bill $\frac{\text{accepted}}{\text{paid}}$.

In the event of your failure to do so, we shall be obliged to seek instructions from the drawers.

Yours faithfully,

Accountant.

FORM No. 25 (b)

NOTICE OF DISHONOUR.

..................19

No. ....

To

....

....

....

DEAR SIR(s),

Please note that the following bills accepted by you and which fell due on.......... are not paid.

We must hold you responsible for any loss or charges which this Bank, or any other party interested in the bills may be put to or incur on account of dishonour.

Yours faithfully,

Accountant. Manager.

F.B.C. No.	Amount.	Drawn by

FORM No. 26

MEMORANDUM FOR SECURING BANKERS' ADVANCES AGAINST STOCK EXCHANGE SECURITIES.

................of................(hereinafter called the said Bankers) having agreed to make advances of moneys to................and to permit................ to open and continue an account with the said Bankers, I..............of.............. do hereby deposit in their hands....................for better securing and re-payment of such advances or any renewal thereof, and as a general cover upon all accounts with the said Bankers' including Bankers' Interest and their usual commission and other lawful charges, and...............hereby authorize them to sell such securities by public auction or private contract, at such time or times, to such person or persons, and at such price or prices and under such conditions as they in their absolute discretion shall think fit, and to apply the proceeds after payment of the costs attending such sale and transfer, in or towards satisfaction of the said advances and all other moneys which may at any time be owing by................to the Bankers, either separately or jointly with any other person or persons, and either as a principal debtor or as a surety for any other person or persons including such interest, commission and charges as aforesaid.

Signature...................

FORM No. 26 (a)

ADVANCES AGAINST STOCKS, SHARES, ETC.

Special Adhesive Stamp of Re. 1.

Date..............................

. BANK, LIMITED.

In consideration of the....................Bank, Limited (hereinafter referred to as the said Bank) allowing me/us the undersigned to overdraw my/our account with the said Bank or to open an overdrawn account with the said Bank or otherwise to obtain assistance from and incur liability to the said Bank I/we hereby pledge to the said Bank as security for the repayment to the said Bank on demand of all amounts due or which hereafter may become due from me/us to the said Bank, as well as for all interests thereon at the rate or rates charged by the said Bank and all costs and charges, all Stocks, Shares and Securities which I/we now deposit or which I/we may have already deposited with the said Bank, or which may be in their possession on my/our behalf as also all Stocks, Shares and Securities which I/we may hereafter deposit with the said Bank in addition to or in substitution for the Stocks, Shares, Securities already deposited or which may hereafter come into their possession on my/our behalf. AND I/we, the undersigned, hereby constitute and appoint as my/our Attorney for the purposes hereinafter mentioned the Secretary or Accountant for the time being in............of the said Bank and specially authorize and empower him to fill up and complete any incomplete transfer attached to any of such Stocks, Shares and Securities, and to insert his name or that of any other nominee of the said Bank therein as transferee of the Shares and Securities, enumerated therein and to sign, or, as the case may be, to sign, seal, execute and deliver any such transfer or other document that may be necessary or required for the purpose of completing the title of the said Bank to any such Stocks, Shares and Securities, and register the same in the books of the concern to which the same relate and obtain fresh scrip for the Shares and Securities enumerated therein in his own name or in that of any other employee or nominee of the said Bank without any reference to or consent of me/us. ALSO to pledge and/or sell and absolutely dispose of all or any such Stocks, Shares and Securities, at such price and in such manner as he may think fit without any reference to or consent of me/us. AND I/we hereby agree at the request of the Secretary or Accountant for the time being in........ of the said Bank to sign, or, as the case may be, to sign, seal, execute and deliver any transfer or other document that may be necessary or required by the said Bank for the purpose of completing the title of the said Bank to any of such Stocks, Shares and Securities. AND I/we further authorize the said Bank to reimburse themselves out of the proceeds of any pledge or sale all costs, charges and expenses incurred by them in transferring and selling all or any of such Stocks, Shares and Securities or maintaining the value thereof or otherwise in connection therewith. AND I/we declare that the said Bank shall not be responsible for any loss from or through any brokers or others employed in the sale of any such Stocks, Shares and Securities or for any loss or depreciation in value of any such Stocks, Shares and Securities arising from or through any cause whatsoever. AND any deficiency whatsoever and howsoever arising I/we agree to make good and pay on demand to the said Bank. AND it is further agreed that the said Bank shall have a lien on all such Stocks, Shares and Securities or on the proceeds after sale thereof (if sold) as security for or in part payment of any other debt due or liability then incurred or likely to be incurred by me/us to the said Bank. AND I/we further authorize the said Bank to collect all dividends and bonuses payable or hereafter paid in respect of any of such Stocks, Shares and Securities and engage to sign all such further documents as may be necessary effectually to vest in or secure to the said Bank the property in the said Stocks, Shares and Securities and dividends and bonuses payable in respect thereof or to effect the selling or transferring of the same or to enable the said Bank to obtain new Stocks and Shares in the event of any Company being wound up or reconstructed. AND I/we further agree at all times to keep up the value of such Stocks, Shares and Securities. AND in the event of a temporary or permanent depreciation in value of any such Stocks, Shares and Securities, at the request of the said Bank or the Secretary or Accountant for the time being in..................of the said Bank either to pay the said Bank in money the difference between the market value of any

FORM No. 26 (a)—*Concluded.*

such Stocks, Shares and Securities on the date when they were deposited with or came into the possession of the said Bank and on the date when such payment as aforesaid may be made, or to deposit with the said Bank on the date when such payment as aforesaid may be made, or to deposit with the said Bank other approved Stocks, Shares and Securities equivalent in value to the market deterioration. AND in the event of my/our failing to comply with such request or failing to pay to the said Bank on demand all or any part of the moneys then due or to owing by me/us to the said Bank I/we hereby authorize the said Bank or the Secretary or Accountant for the time being in............of the said Bank to exercise all or any of the powers hereby conferred upon them and him. AND I/we declare that the said Bank or the Secretary or Accountant for the time being shall not be answerable or responsible for any damage or depreciation which any of such Stocks, Shares and Securities may suffer whilst in their possession under this Agreement nor shall the said Bank or the Secretary or Accountant for the time being be under any liability whatsoever to make any payments of money or to do any other act or thing for the purpose of preventing the loss or depreciation of the said Stocks, Shares and Securities. AND I/we further declare that I am/we are the owner/owners of all the Stocks, Shares and Securities already and now about to be deposited by me/us with the said Bank and that the same are accepted for such deposit within my /our own disposition and control and free from any prior charge.

AND I/we hereby also agree that any notice in writing requiring to be served hereunder shall be sufficiently served if addressed to me/us at my/our address registered in the Bank or in the event of no such address being registered at my/our last known place of residence or business in............and left at such address or place or if forwarded to me/us by post at the address or place aforesaid. A notice sent by post shall be deemed to be given at the time when in due course of post it would be delivered at the address to which it is sent.

In witness whereof I/we have hereunto set my/our hand this First day of........... one thousand nine hundred..................

Signed by

In the presence of...............

Address....................

FORM No. 26 (b)

SHARE TRANSFER FORM.

I,................of............, in consideration of the sum of Rupees......... paid to me by............hereinafter called the said Transferee do hereby transfer to the said Transferee..............Shares numbered..............standing in my name in the books of the..................Company Limited, to hold unto the said Transferee................his executors, administrators, and assigns, subject to the several conditions on which I hold the same at the time of the execution; and I the said ....do hereby agree to take the said Shares subject to the same conditions.

Signed this............day of............in the year 19....

Signed by the abovenamed transferor in

the presence of Witness.......... Seller..............................

Address ....

Signed by the abovenamed transferee in the presence of Witness .... Address	Purchaser . Occupation Address....

Approved

Directors.

Purchaser's Specimen
Signature.

FORM No. 26 (c)

NOTICE OF LIEN ON SHARES TO COMPANY.

...............................BANK LTD.

Date..................

To

THE SECRETARY,

.......................Co., Ltd.,

DEAR SIR,

We hereby beg to give you notice that we have a lien on the shares Nos........in your Company standing in the name of...........of.................

Kindly sign and return to us the enclosed duplicate notice and at the same time be good enough to say whether you have received notice of any prior charges on the above shares.

Yours faithfully,

For............Bank Ltd.,

....................*Manager.*

On the enclosed duplicate is endorsed the following certificate :—

We hereby acknowledge having received a copy of the above notice and beg to state that we have not yet received any notice of a prior charge upon the shares.

Per pro....................Co., Ltd.

..............*Secretary.*

FORM No. 27

APPLICATION FOR BANK'S GUARANTEE.

To.

........................BANK, LIMITED,

DEAR SIRS,

In consideration of your guaranteeing to pay to Messrs.........................of ....the sum of............unconditionally in the event of my failing to perform my portion of the contract dated..............made between myself of the one part and Messrs.................of the other part in respect of certain machinery and upon terms and conditions detailed in the said contract, and in respect of which guarantee given by you to the said................you have written a letter dated........... to that Company, a copy of which is scheduled herein, I,............gurantee to you, the............Bank Limited, payment of all sums which may at any time or times be paid by you to the said Company in respect of the guarantee above referred to, and I agree to keep in deposit with you or your Agents a sum of...............in 19............. War Loan earmarked for the purpose of meeting my obligations to you in respect of payments which may be necessitated under the said guarantee given by you and I further agree to hypothecate to you the undermentioned securities, as a security for the due repayment of all short-falls, if any, in respect of and arising out of payments made by you and I further agree to hold you indemnified against any loss or damage arising out of your dealings with the said...........and I further undertake that no portion of the said deposit of...... ....may be claimed to be used by me for any purpose other than payments which require to be made under the guarantee given by you and I further agree that this guarantee shall be held as a continuing guarantee for any sum or balance which may at any time be due upon the said account in respect of the guarantee given by you.

Yours faithfully,

FORM No. 27—*Concluded.*

SCHEDULE "A."

Copy of letter dated................to the.............................from the.......................Bank Ltd,........................

Whereas by an agreement dated the............day of................19.... and made between..........................of the one part and you of the other part the said................of................in consideration of your granting time until the end of the first cane crushing season after the date of the shipment of the last part of certain machinery hereinafter referred to or, until the............of............19........ whichever should first happen for the payment of............the balance of the purchase price of................in the manner mentioned in sub-clause (*c*) of Clause 5 of the said agreement for machinery more particularly described in the Schedule to the said agreement agreed to obtain a guarantee by an Exchange Bank to secure payment of the said sum of ....in the manner therein provided and WHEREAS the said............has requested us to guarantee such payment and we have agreed to do so in manner hereinafter appearing.

We,................Bank Limited hereby unconditionally guarantee to you the unconditional payment of the said sum of................on the date and in the manner as stated in the said Agreement.

Should the said...............fail to make payment on due date as aforesaid, such sum of................shall be payable by us on demand without notice of default or other notice being served on the said................or upon us, PROVIDED ALWAYS that should the said machinery not be found by................to work satisfactorily in accordance with the terms of the said agreement the said sum of..............shall be deposited by us upon due date as aforesaid in an account which we shall open in the joint name of the said............and you and in the event of its being subsequently found by Agreement, Arbitration, Award, or Decree that in fact the said............had no good grounds for withholding payment or failing to deposit the said sum under a similar provision in the said agreement to this present provision you shall be entitled to withdraw the said sum together with all interest thereon and in any other event the deposit and all interest thereon shall be payable in accordance with such Agreement, Arbitration, Award or Decree.

You may grant the said...........any time or other indulgence or make any arrangement whatever with him either as to receipt of a composition on your claim or otherwise or release or part with any security you may hold on any part of or interest in the same without discharging or otherwise diminishing our liability to you, and you may enforce or have recourse to all remedies or means for recovering any of the said moneys for the time being payable as aforesaid whether under this guarantee or under any other security or otherwise at such time and in such order and manner as you may think fit. All dividends and payments received by you from or on account of the said....................may be applied by you in any way whatsoever in satisfaction of any other sum or sums payable by the said................to you and any such payments as are not so applied to any other account may be taken and applied as payments in gross without any right on our part to stand in your place or claim the benefit of any such dividends and payments or other security or guarantee until you have received the full amount of all claims which you may have against the said..................

Signature........................

Manager,

...........Bank Ltd.

FORM No. 28

Pledge of Jewellery as Security for Loan on Promissory Note

. . . . 19. . . .

To,

The Manager,

. . . . Bank, Limited,

. . . .

Dear Sir,

As security for the due re-payment of $\frac{\text{my}}{\text{our}}$ Promissory Note of . . . . for Rs. . . . . and interest as specified therein, please receive Jewellery, belonging to $\frac{\text{me}}{\text{us}}$ with the weight in tolas as per statement at foot (which has been valued by your saraf at Rs. . . . .) and in the event of $\frac{\text{my}}{\text{our}}$ failing to meet the above obligation on the Bank making a demand $\frac{\text{I}}{\text{we}}$ hereby authorize the Bank to dispose of the said security and from the proceeds re-imburse the Bank and $\frac{\text{I}}{\text{we}}$ also bind $\frac{\text{myself}}{\text{ourselves}}$ to make good any deficiency in connection therewith. The notice of demand will be sufficient if posted to $\frac{\text{my}}{\text{our}}$ last registered address. Even if not received by $\frac{\text{me},}{\text{us}}$ $\frac{\text{I}}{\text{we}}$ undertake not to take any objection to the regularity of the sale of the pledged Jewellery by the Bank and will not be entitled to any damage against the Bank on the ground of irregularity of the sale.

$\frac{\text{I}}{\text{We}}$ further declare that the Jewellery, lodged by $\frac{\text{me}}{\text{us}}$ is of genuine gold and belongs to $\frac{\text{me}}{\text{us}}$ and no one else has any lien over it.

List of Jewellery referred to above and deposited with the Bank as Security:

No.	Description.	Gross Weight.	Approximate Value.		
			Rs.	as.	ps.
		Total			

Yours faithfully,

FORM No. 29

Agreement for Cash Credit.

The..........................Bank, Limited,................through their office at...............having at the request of..................(hereinafter called the Borrowers) undertake to open in the Books of the Bank at...............a Cash Credit-account with the borrowers, up to the maximum limit of Rs.................

It is agreed as follows:—

1. That the Bank shall not, under this agreement, be required to make advances to such an amount that the total dues in this account including interest and other charges may, at any time, exceed the sum of Rs................ The Borrowers shall, however, be responsible for the payment of the entire amount that may at any time be due in this account although such amount may exceed the above-mentioned limit.

2. That interest at the rate of...........per cent. per...........shall be calculated on the daily balance of the said account and shall be charged to the account on the last working day of each month and it will form part of the principal and will carry interest at the abovementioned rate.

3. That on the............day of............19...next or on demand being made by the Bank on any earlier date, the Borrowers shall pay to the Bank, the balance then outstanding and owing to the Bank on the said account inclusive of interest at the rate abovementioned to the date of payment, together with all the charges and expenses charged or incurred by the Bank as ascertained by the books of the said Bank which the Borrowers agree to accept as sufficient proof of the correctness thereof, without the production of any voucher or paper.

4. That the Head Office of the Bank being at..........., the said Bank will be at liberty to sue the Borrowers at............or at......................

5. That the borrowers will be liable for all costs of recovery incurred by the Bank before filing a suit and also for all costs in connection with the suit till recovery of full amount, whether such costs may be allowable by rules of Court or not.

6. That a relative Pro-note dated............for Rs............has been given to the Bank by the Borrowers to secure payment of any sum which may at any time be due to the Bank on such account.

7. That the Borrowers agree that when the Reserve Bank rate of discount is........ per cent. or above they will pay as interest 1 per cent. above the said Reserve Bank rate.

8. That the Borrowers agree to pay incidental charges for every six months or part thereof (according to labour involved) during the time the account remains open.

9. That the Borrowers shall not be entitled to any interest, for any sum which may at any time stand to their credit in this account.

10. That the Bank will always be at liberty to stop making advances at any time without previous notice and without assigning any reason, even though the said limit of Rs...........has not been fully availed of.

11. That the Borrowers further agree to pay interest at the stipulated rate on..... portion of the aforesaid limit even if the limit is not availed of at all, or an amount less than the aforesaid portion is borrowed or even if there is a credit balance in favour of the Borrowers.

Witnessed by:—	Signature of Borrower or Borrowers.
....	....
Address............................	Address ....
....	....
Dated........................19....	Dated ....19....
Witnessed by:—	For the....................Bank, Ltd.,
....	..........Manager.
Address	
....	
Dated ....19..	Dated ....19....

FORM No. 30

AGREEMENT FOR ADVANCES ON THE SECURITY OR PLEDGE OF GRAIN AND PRODUCE.

To

........................BANK LTD.,

GENTLEMEN,

In consideration of the Bank granting me/us advances limited in amount and duration as in the discretion of the Bank from time to time on the security of grains or other produce, I/we..............................residing at......................do hereby for myself/ourselves, assigns, heirs, executors and administrators agree:—

1. That the advances so given shallbe payable on demand with interest to date of payment.

2. That interest on the advances shall be payable at the rate of % per annum to be charged on the 31st December, and 30th June and if not paid on these dates may be added to the principal amount and shall bear interest at the rate aforesaid as from the due date and that all interest due will be paid up-to-date at the date the advance is finally cleared.

3. That if the advance is not paid on demand then the Bank may sell all or any part of the security pledged either by auction or private sale and under such condition as the Bank shall think fit after issuing to $\frac{\text{me}}{\text{us}}$ days' notice by registered letter posted to above address; the Bank, however, shall not be liable for any loss arising by reason of such sales.

4. $\frac{\text{I}}{\text{We}}$ undertake to hand over the grain or other produce to the Bank in the following manner:—

(a) The grain or other produce will be stored in the godowns or filled in the Khatties in the presence of an employee of the Bank.

(b) The godowns $\frac{\text{and}}{\text{or}}$ Khatties will be handed over to the Bank with invoice containing full particulars of the grain or other produce including weight or other measurement and market value.

(c) The godown $\frac{\text{and}}{\text{or}}$ Khatties so handed over will be in the full possession of the Bank who shall be entitled to keep their Durwans on the premises until such time as the advance including interest due is repaid and the godowns $\frac{\text{and}}{\text{or}}$ Khatties are redelivered to $\frac{\text{me}}{\text{us}}$ and $\frac{\text{I}}{\text{we}}$ shall have no right to open them or in any way take delivery of the same or deliver to others the contents thereof.

(d) Notwithstanding the delivery to the Bank of the godowns $\frac{\text{and}}{\text{or}}$ Khatties and the presence of the Bank's Durwans, the Bank shall in no way be responsible for the safe custody of the contents nor for the preservation of the said godowns, nor for the performance and observation of the terms on which the same are held and $\frac{\text{I}}{\text{we}}$ hereby undertake to be responsible for their safety from theft and destruction or deterioration by rain, or other causes, it being understood that if so required the Bank on a written application will allow $\frac{\text{me}}{\text{us}}$ to open the godowns $\frac{\text{and}}{\text{or}}$ Khatties for examination.

5. $\frac{\text{I}}{\text{We}}$ hereby undertake that at no time will $\frac{\text{I}}{\text{we}}$ allow the market value of the grain or produce pledged, less a clear margin of % to fall below amount due by $\frac{\text{me}}{\text{us}}$ but should at any time the margin fall below this figure then the Bank may sell the security by auction or private sale after giving $\frac{\text{me}}{\text{us}}$ days' notice by registered letter to the above address.

6. If $\frac{\text{I}}{\text{we}}$ do not keep at all times the grain and produce insured to the full value thereof to the satisfaction of the Bank in some insurance office approved by it and hand

FORM. No. 30—*Concluded.*

over valid policies therefor assigned to the Bank, then the Bank may effect insurance thereof to the full value or any smaller value at its own discretion and may treat all moneys so expended as money advanced to $\frac{\text{me}}{\text{us}}$.

7. The Bank may pay all moneys necessary to maintain their undisturbed possession of the said godowns $\frac{\text{and}}{\text{or}}$ Khatties and to preserve the same in good condition and may treat all money so expended as money advanced to $\frac{\text{me}}{\text{us}}$.

8. The security held on the terms of this agreement shall act as a continuing security for the ultimate balance of all moneys that may be due from $\frac{\text{me}}{\text{us}}$ to the Bank and neither the said security nor this agreement shall be considered terminated by reason only of the repayment of any particular advance or by $\frac{\text{my}}{\text{our}}$ account with the Bank being in credit at any time or from time to time (nor by any change in the constitution by death or otherwise in the partnership now carried on by us).

9. All grain or other produce which may hereafter be deposited as security with the Bank by way of addition to or substitution for the grain or other produce now deposited shall be included in and held subject to the terms of this agreement.

Witness .... Signed ....

FORM No. 30 (a)

PLEDGE OF GOODS TO SECURE A DEMAND CASH CREDIT.

....BANK LTD.,

....

No.............

Amount Rs.........

Name(s)......................................

THE........................BANK LIMITED (hereinafter called " the Bank ") having at the request of.......................................(hereinafter called " the Borrower(s) ") opened or agreed to open in the Books of the Bank at..............a Cash Credit Account to the extent of Rupees........................with the Borrower(s) to remain in force until close by the Bank and to be secured by goods to be pledged with the Bank. IT IS HEREBY AGREED between the Bank and the Borrower(s), the Borrower(s) agreeing jointly and severally as follows:—

1st.—That the goods described in general terms in the Schedule hereto which have been already delivered to and the goods which shall be hereafter delivered to the Bank under this Agreement whether for the purpose of forming additional security for any sum already drawn or as security for any sum or sums to be drawn against the said Cash Credit Account, or by way of substitution for and in lieu of any goods which may from time to time have been delivered or may be delivered to the Bank under this Agreement or otherwise howsoever (hereinafter called " the Securities "), are hereby pledged to the Bank or are to be deemed to have been so pledged as security to the Bank for the payment by the Borrowers of the balance due to the Bank at any time or ultimately on the closing of the said Cash Credit Account and for the payment of all debts and liabilities mentioned in the 11th clause hereof. The expression " the balance due to the Bank " in this and the subsequent clauses of this Agreement shall be taken to include the principal moneys from time to time due on the said Cash Credit Account and also all interest thereon calculated from day to day at the rate hereinafter mentioned and the amount of all charges and expenses which the bank may have paid or incurred in any way in connection with the Securities or the sale or disposal thereof.

FORM No. 30 (a)—*Contd.*

2nd.—That the Borrower(s) shall not during the continuance of this Agreement pledge or otherwise charge or encumber any of the goods for the time being the subject or intended to be the subject of this security nor do or permit any act whereby the security hereinbefore expressed to be given to the Bank shall be in anywise prejudically affected.

3rd.—That the Borrower(s) shall with the previous consent of the Bank be at liberty from time to time to withdraw from the Bank any of the goods for the time being pledged to the Bank and forming part of the securities the subject of this Agreement, provided the advance value of the said goods is paid into the said account or goods of a similar nature to those mentioned in the schedule hereto, or any of the same, and of at least equal value, are substituted for the goods so withdrawn. Provided always that with the previous consent of the Bank the Borrower(s) shall be at liberty to withdraw from the Bank any of the goods for the time being pledged to the Bank without paying into the said Account such advance value as aforesaid or substituting any goods as aforesaid provided the necessary margin required by the 6th clause hereof is fully maintained.

4th.—That all securities already and hereafter delivered as aforesaid shall be insured against Fire risks by the Borrower(s) with some Insurance Company or Companies approved by the Bank in the name of the Bank for the full market value of such securities and that all policies for and receipts for premia paid on such Insurances shall be delivered to the Bank. Should the Borrower(s) fail to so insure or fail to deliver the policies or receipts for premia as aforesaid the Bank shall be at liberty to effect such insurances at the expense of the Borrower(s).

5th.—That all sums received under any such Insurances as aforesaid shall be applied in or towards the liquidation of the balance due to the Bank for the time being and in the event of there being a surplus the same shall be applied as provided by the 11th clause hereof.

6th.—That the Borrower(s) shall make and furnish to the Bank such statements and returns of the cost and market value of the securities and a full description thereof and produce such evidence in support thereof as the Bank may from time to time require and shall maintain in favour of the Bank a margin of........per cent. between the market value from time to time of the securities and the balance due to the Bank for the time being. Such margin shall be calculated on the open market value of the securities as fixed by the Bank from time to time and shall be maintained by the Borrower(s) either by the delivery of further security to be approved by the Bank or by cash payment by the Borrower(s) immediately on the market value for the time being of the securities becoming less than the aggregate of the balance due to the Bank plus the amount of the margin as calculated above.

7th.—The interest at the rate of........per cent. per annum shall be calculated and charged on the daily balance in the Bank's favour due upon the said Cash Credit Account until the same is fully liquidated and shall be paid by the Borrower(s) as and when demanded by the Bank.

8th.—That on demand by the Bank the Borrower(s) shall pay to the Bank the Balance then due to the Bank on the said Cash Credit Account together with all further interest at the rate abovementioned and the amount of all further charges and expenses (if any) to the date of payment provided that nothing herein in this clause contained shall be deemed to prevent the Bank from demanding payment of the interest for the time being due at the abovementioned rate without at the same time demanding payment of the balance due to the Bank exclusive of such interest.

9th.—That if the Borrower(s) shall fail to maintain such margin as aforesaid or if the Borrower(s) fail or neglect to repay to the Bank on demand the balance then due to the Bank or in the event of the Borrower(s) becoming or being adjudicated Bankrupt or Insolvent or executing any Deed of Arrangement, Composition or Inspectorship or in the event of any distress or execution being levied or enforced upon or against any of the property of Borrower(s) whether the said property shall or shall not be the subject of this security or (whether the Borrower(s) are or are not a Joint Stock Company) in the event of any person, firm or Company taking any steps towards applying for or obtaining an order for the appointment of a Receiver of the Borrower's property or any part thereof or (in the event of the Borrower(s) being a Joint Stock Company) if any person, firm or Company shall apply for or obtain an order for the winding up of the Borrower(s) or if any such order is made or any step be taken by any person, firm or Company in or towards passing any resolution to wind up the Borrower(s), or if any such resolution be passed whichever may first happen,

FORM No. 30 (a)—*concluded.*

it shall be lawful for the Bank forthwith or at any time thereafter and without any notice to the Borrower(s), without prejudice to the Bank's right of suit against the Borrower(s), either by public auction or private contract absolutely to sell or otherwise dispose of all or any of the securities either together or in lots or separately and to apply the net proceeds of such sale in or towards the liquidation of the balance then due to the Bank.

10th.—That if the net sum realized by such sale be insufficient to cover the balance then due to the Bank, the Bank shall be at liberty to apply any other money or moneys in the hands of the Bank standing to the credit of or belonging to the Borrower(s) or any one or more of them in or towards payment of the balance for the time being due to the Bank; and in the event of there not being any such money or moneys as aforesaid in the hands of the Bank or in the event of such money or moneys being still insufficient for the discharge in full of such balance the Borrower(s) promise and agree forthwith on production to them of an account to be prepared and signed as in the 12th clause hereinafter provided to pay any further balance which may appear to be due by the Borrower(s) thereon, PROVIDED ALWAYS that nothing herein contained shall be deemed to negative, qualify or otherwise prejudicially affect the right of the Bank (which it is hereby expressly agreed the Bank shall have) to recover from the Borrower(s) the balance for the time being remaining due from the Borrower(s) to the Bank upon the said Cash Credit Account notwithstanding that all or any of the said securities may not have been realized.

11th.—That in the event of there being a surplus available of the net proceeds of such sale after payment in full of the balance due to the Bank it shall be lawful for the Bank to retain and apply the said surplus together with any other money or moneys belonging to the Borrower(s) or any one or more of them for the time being in the hands of the Bank in or under whatever account as far as the same shall extend against in or towards payment or liquidation of any and all other moneys which shall be or may become due from the Borrower(s) or any one or more of them whether solely or jointly with any other person or persons, firm or Company to the Bank by way of Loans, Discounted Bills, Letters of Credit Guarantees, Charges or of any other debt or liability including Bills, Notes, Credits and other obligations current though not then due or payable or other demands legal or equitable which the Bank may have against the Borrower(s) or any one or more of them or which the law of set-off or mutual credit would in any case admit and whether the Borrower(s) or any one or more of them shall become or be adjudicated Bankrupt or Insolvent or be in liquidation or otherwise and interest thereon from the date on which any and all advance or advances in respect thereof shall have been made at the rate or respective rates at which the same shall have been so advanced.

12th.—The Borrower(s) agree to accept as conclusive proof of the correctness of any sum claimed to be from them to the Bank under this Agreement a statement of account made out from the books of the Bank and signed by the Accountant or other duly authorized officer of the Bank without the production of any other voucher, document or paper.

13th.—That this Agreement is to operate as security for the balance from time to time due to the Bank and also for the ultimate balance to become due on the said Cash Credit Account and the said account is not to be considered to be closed for the purpose of this security and the security is not to be considered exhausted by reason of the said Cash Credit Account being brought to credit at any time or from time to time or of its being drawn upon to the full extent of the said sum of Rs.........if afterwards re-opened by a payment to credit.

14th.—Provided always that this Agreement is not to prejudice the rights or remedies of the Bank against the Borrower(s) irrespective and independent of this Agreement in respect of any other advances made or to be made by the Bank to the Borrower(s).

15th.—In case the Borrower(s) shall be a firm or members of a firm no change whatsoever in the constitution of such firm or during the continuance of this Agreement shall impair or discharge the liability of the Borrower(s) or any one or more of them thereunder.

IN WITNESS whereof the Borrower(s) have hereunto set his (their) hands this day of in the year One Thousand Nine Hundred and

SCHEDULE or SECURITIES referred to in the foregoing Instrument :—

FORM No. 30 (b)

LETTER OF LIEN.

.19.

To

THE MANAGER,

.........................BANK, LIMITED,

SIR,

In consideration of your Bank having made an advance of Rs.............or making advance to me/us (not exceeding Rs.............in all), I/we hereby deposit and pledge with the Bank, goods, described in the Schedule hereto, of the value of Rs..............thus providing a margin of........% therein in security for payment on demand of the said advances with interest thereon at........per cent. per annum or at such other rate as may be, from time to time, agreed upon, with*...........rests together with Fire Insurance Premium and all Warehouse and other charges paid or incurred by the Bank in respect of the said goods.

I/we will be at liberty to remove goods from time to time on sufficient cash payments to the Bank, but so long as any money remains due to the Bank in respect of the said advances or any interest thereon or any Insurance Premium or charges on the said goods, I/we hereby engage to maintain the above margin intact *i.e.*, the balance due to the Bank at any time will not have a larger proportion to the value of the goods in deposit with and pledged to the Bank than........to 100.

In case the amount of the said advances with all interest and charges shall not be paid to the Bank on demand or in case I/we at any time fail to maintain the margin of security above stipulated between the sum due by me/us and market value of the security for twenty-four hours after being required in writing to do so, it shall be lawful for the Bank forthwith or at any time thereafter absolutely to sell and dispose of all or any of the said goods and to apply the net proceeds of such sale in satisfaction so far as the same will extend towards the liquidation of the amount due for principal and interest in respect of the said advances, together with all costs, charges and expenses incurred by the Bank and I/we agree to accept the Bank's account of such sale, signed by the Manager, Accountant, or other duly authorized officer of the Bank as sufficient proof of the correctness of the amount realized by, and the charges and expenses in connection with such sale.

If the net sum realized by such sale should be insufficient to cover the full amount due in respect of the said advances with interest and charges as shown in the said account of the Bank, I/we agree to pay to the Bank forthwith on delivery of the said account any balance due by me/us on the footing thereof.

It is understood that the Bank's lien on the goods pledged under this agreement shall also extend to any other sum or sums of money for which I/we (or any or either of us) either separately or jointly with any other person or persons may be or become indebted or liable to the Bank on any other account.

On payment of all sums, including interest and charges payable hereunder, any part of the goods so deposited and pledged which may not have been sold shall be returned to me/us and any surplus of net proceeds of any such sale of the said goods shall be paid to me/us or as I/we shall direct.

....

Signatures.

(*On the reverse the following Schedule is printed.*)

Schedule.

Marks.	Date of Invoice.	Bales or Packages.	Description of goods.

*Insert "half-yearly" or "monthly", as the case may be.

FORM No. 31

Trust Receipt.

.19

To

.Bank Ltd.,

In consideration of the Bank handing to me Shipping Documents for goods, as per particulars at foot, hypothecated to the Bank as collateral security for the due payment of the undermentioned draft drawn upon their office in............by............and accepted by their said Office $\frac{\text{I}}{\text{we}}$ hereby engage to land, store and hold the said goods as Trustee for and on behalf of the Bank, and the proceeds of the sales shall be received by $\frac{\text{me}}{\text{us}}$ as Trustee for the Bank, and paid to the Bank as and when received, $\frac{\text{I}}{\text{we}}$ at the same time specially advising the Bank of the account on which such payment is made, and $\frac{\text{I}}{\text{we}}$ undertake to provide the Bank, by this or other means, with sufficient funds to meet the said draft together with all charges and commission, not less than......days before maturity.

$\frac{\text{I}}{\text{We}}$ also undertake to keep the goods fully insured against fire, and to hand over to the Bank all amounts received from the insurers, the policies of Insurance being, in the meantime, held by $\frac{\text{me}}{\text{us}}$ as Trustee for and on behalf of the Bank.

Without prejudice to anything herein contained $\frac{\text{I}}{\text{we}}$ will, on the Bank's written demand to be made at any time forthwith, either return to the Bank the said Shipping Documents, Fire Insurance Policies, or any of them, or deliver up to the Bank the said goods or any part thereof.

Particulars of Drafts and Goods.

Amount of Bill.			Due.	Description of Goods.	Marks and Nos.	Vessel.
Rs.	As.	Ps.				

Signature.

FORM No. 32

Assignment of the Life Policy to secure Assignor's own Liabilities.

" This Indenture made this............day of..........One thousand nine hundred and..................BETWEEN...................of........................ (hereinafter called the "Assignor" which expression shall include his heirs, legal representative, executors, administrators or assigns wherever the context hereof so requires or admits) of the one part and.................Bank Limited (hereinafter called " the Bank " which expressions shall include their successors and assigns where the context

FORM No. 32—*Concluded*

hereof so requires or admits) of the other part WITNESSETH that for the purpose of effecting the security hereby given the Assignor doth hereby as its beneficial owner assign unto the Bank ALL that the Policy of Assurance granted to the Assignor on the life of the Assignor............by the............Insurance Company Limited, for the sum of ....rupees and which policy bears date the............day of..........19..., and is numbered............, and all the money and benefits assured for to become payable by or under the same policy and the full benefit thereof TO HOLD the same unto the Bank subject to the proviso for redemption hereinafter contained. PROVIDED ALWAYS that if the Assignor shall on demand pay to the Bank all and every sums and sum of money then due or owing to the Bank anywhere from or by the Assignor either solely or jointly with any other person or persons in partnership or otherwise and whether as principal or as surety upon banking account or upon any discount or other account or for any other matter or thing whatsoever including the usual banking charges the Bank shall at any time thereafter, upon the request and at the cost of the Assignor re-assign the said Policy of Assurance hereby assigned unto him or as he shall direct. AND the Assignor doth hereby covenant with the Bank that he will punctually pay the premiums and all other moneys which may become payable in respect of the said Policy and observe all the conditions necessary for keeping the same in force and that he will from time to time lodge with the Bank the receipt for such premiums at least........clear days before the expiration of the days of grace allowed for the payment of the said premiums. And it is hereby agreed that if the Assignor shall make default in lodging the receipt for any such premium within such time as aforesaid the Bank may if they shall think fit so to do pay such premium or premiums and debit the account of the Assignor with the amount thereof PROVIDED ALWAYS that it shall be lawful for the Bank at any time or times hereafter of their own absolute authority without the consent or concurrence of the Assignor to sell and or surrender the said Policy, moneys and premises to the said Assurance Company or absolutely to sell or otherwise dispose of the same to any other person or persons whomsoever by public auction or by private contract and or subject to such conditions or stipulations relating to the title or otherwise as shall appear expedient with full power to buy in or rescind or vary any contract for sale and to re-sell without being answerable for any loss to arise thereby and for the purposes aforesaid or any of them to execute and do all such assurances and things as they shall think fit and to receive the moneys to arise from the surrender sale or other disposition of the said Policy moneys and benefits and out of the same moneys to pay or retain and satisfy all moneys due or owing on the security of these presents and all costs and expenses occasioned by the non-payment thereof, or incidental to the execution of his power. AND the Assignor doth hereby further covenant with the Bank that the said policy of Assurance is a valid and subsisting policy and not forfeited or otherwise become void or voidable. PROVIDED ALWAYS and it is hereby declared and agreed that this security shall be a continuing security notwithstanding any settlement of account or other matter or thing whatsoever and shall be in addition and without prejudice to any other security or securities which the Bank may now or hereafter hold from or on account of the Assignor. AND IT IS HEREBY FURTHER DECLARED AND AGREED that the Bank shall in the event of their receiving notice that the Assignor has encumbered or otherwise disposed of his equity of redemption in the said Policy, moneys and benefits and premised or any part thereof be entitled to close the then current account and to open a new account with the Assignor and that no money paid or carried to the credit of the Assignor in such new account shall be appropriated towards or have the effect of discharging any part of the amount due to the Bank on the said closed account at the time when they received such notice as aforesaid.

In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written."

Signed, sealed, and delivered by the abovenamed
in the presence of..............................

Seal.

FORM No. 32 (a)

RE-ASSIGNMENT OF LIFE POLICY.

"This Indenture made this........day of...........One thousand nine hundred ....BETWEEN the within-named...........Bank Limited (hereinafter called "the Bank") of the one part and the within-named...........(hereinafter called the "Mortgagor") of the other part WITNESSETH that the Bank as Mortgagees do hereby assign unto the Mortgagor THE within-mentioned Policy of Assurance on his life granted to him by............Insurance Company, Ltd., which bears the date, the ....day of...........19......, and is numbered.......TO HOLD the same unto the Mortgagor discharged from all principal moneys and the interest secured by the within written Indenture. In witness whereof the Bank have hereunto affixed their seal..........day of year first above written."

FORM No. 32 (b)

NOTICE OF ASSIGNMENT TO THE INSURANCE CO.

...............BANK LTD.,
..........................19.

THE MANAGER,
....................INSURANCE CO., LTD.,

GENTLEMEN,

I hereby give you notice, that by an Indenture dated the...............day of ....19..................of.................whose life is assured by Policy No.............in your company, did assign the said Policy to the............. Bank Ltd.

Kindly acknowledge the receipt of this notice and inform me whether you have received notice of any previous charge on this Policy.

I enclose postage stamps for..............in payment of the Registration Fee.

I am, Gentlemen,
Yours faithfully,

Manager.

FORM No. 33

MORTGAGE-DEED IN FAVOUR OF BANK TO SECURE INDEBTEDNESS ON LOAN ACCOUNT.

between..................of....................(hereinafter called the Mortgagor which expression shall be deemed to include his heirs, Executors, Administrators and assigns) of the one part and the..............Bank, Limited, a joint-stock Company incorporated under the Indian Companies Act and having its registered office at.......... (hereinafter called the Bank which expression shall include its assigns) of the other part.

Whereas the Mortgagor is the owner and the proprietor of the messuages, lands, hereditaments and premises described in the Schedule hereto and intended to be hereby mortgaged free from encumbrances and whereas the Bank has agreed to lend to the Mortgagor the sum of Rupees................only on having the re-payment thereof with interest secured in the manner hereinafter appearing.

Now this Indenture Witnesseth as follows:—

I. In pursuance of the said agreement and in consideration of the sum of Rupees.... paid on or before the execution of these presents by the Bank to the Mortgagor (the receipt whereof the Mortgagor hereby acknowledges) the Mortgagor hereby covenants with the Bank as follows:—

(1) That the Mortgagor will pay to the Bank the said principal sum of........by equal half-yearly instalments of Rs............on the first day of ....and the first day of..........each year, commencing from..........., and any interest due thereon so that the whole debt is paid in full on or before the...............

FORM No. 33—*Concluded*

(2) That the Mortgagor shall in addition pay interest on the principal sum secured by these presents at the rate of...... % per annum.

(3) That the Mortgagor shall pay to the Bank interest at the rate stipulated in Clause 1 (2) with half-yearly rests on the......and........ up to the date of realization in case the Bank has to institute a suit for recovery of the principal and interest or any portion thereof that may be due to the Bank. And if at any time six months' interest payable under these presents shall remain owing and unpaid then the interest so in arrears shall be converted into principal and until paid off shall carry interest at the aforesaid rate of..........per cent. per annum with half-yearly rests.

(4) That the Mortgagor shall and will during the subsistence of this security at his own costs and charges and expense keep and maintain the said premises hereby mortgaged in good repair and tenantable condition.

(5) It is hereby agreed and declared that in case any of the instalments of principal or interest payable under these presents be not satisfied on the dates hereinbefore appointed for the payments of such instalments of principal or interest then the whole amount of principal remaining unpaid together with interest due shall at once become payable to the Bank, and the Bank may forthwith enforce at once any of the remedies to which a holder of a simple mortgage is entitled under the Transfer of Property Act.

(6) That the Mortgagor will within one month from the date of these presents insure and keep insured the building and such other part of the mortgaged premises as are of an unsuitable nature or any part or parts thereof from loss or damage by fire in the full value thereof in some insurance office to be approved of by the Bank in the joint names of the Mortgagor and the Bank as mortgagee (the relative policy to contain the agreed Bank clause of the Fire Insurance Association) and will duly pay all premiums and sums of money payable for that purpose and will deliver to the Bank the policy for such insurance and the receipt for every such payment within seven days after it shall become due and in case the Mortgagor shall neglect or refuse to keep the said premises insured to the amount aforesaid or to deliver such policy and receipts as aforesaid then and in every such case it shall be lawful for the Bank to insure the same to the amount aforesaid or any less amount and all sums of money expended by the Bank in or about such insurance as aforesaid with interest for the same at the rate of rupee......per cent. per annum (with half-yearly rests) computed from the time or respective times of advancing the same shall be repaid by the Mortgagor to the Bank on demand and in the meantime shall be a charge on the premises hereby mortgaged in addition to the principal sum and interest thereon.

(7) That the Mortgagor agrees that all sums of money awarded as compensation for any compulsory acquisition of any portion of the mortgaged property by any Government, municipal or railway or district board authority shall be receivable by the Bank direct on behalf of the Mortgagors and that such money as well as moneys received under and by virtue of any such insurance as aforesaid shall at the option of the Bank either be forthwith applied in or towards substantially rebuilding, re-instating or repairing the said premises or in or towards the payment of the principal money, interest and costs for the time being remaining due on the security of these presents.

II. For the consideration aforesaid and in further pursuance of the said agreement the Mortgagor hereby grants and transfers by way of simple mortgage unto the Bank all the property described in the Schedule hereto together with all rights, easements and appurtenances thereto and all his rights, title and interest in and to the said premises to the intent that all the said premises hereby mortgaged shall remain and be charged by way of simple mortgage and free from all encumbrances as security for the payment to the Bank of the said principal money interest and costs in accordance with the covenants hereinbefore contained.

III. That the Mortgagor shall allow the Bank, its servants, agents and surveyors at all reasonable times to enter the said premises and view and examine the state and condition thereof.

IV. Provided always that the Mortgagor may at any time after giving the Bank thirty days' notice pay the Bank the whole of the principal sum and interest and costs that may be due to the Bank.

In Witness whereof the Mortgagor has set his hands on the.....................day of................19....

Signed in the presence of:

1................
2................

(Schedule).

FORM No. 33(a)

MEMORANDUM OF DEPOSIT BY A CUSTOMER OF THE TITLE DEEDS TO SECURE HIS OWN ACCOUNT.

Memorandum that I, the undersigned of............hereby acknowledge that I have this day deposited with the..........Bank, Ltd., (hereinafter called "the Bank"; which expression shall include their successors and assigns), the documents specified in the Schedule hereto, with intent to create an equitable mortgage upon all my estate and interest in the property to which such documents relate, for the purpose of securing the payment to the Bank on demand of all moneys now owing or which shall at any time hereafter be owing from me either solely, or jointly with any person or persons to the Bank whether on balance of account, or by discount, or otherwise in respect of bills of exchange, promissory notes, cheques, and other negotiable instruments, or in any manner whatsoever, and including interest with half-yearly rests, commission and other banking charges, and any law costs incurred in connection with the account. And I hereby further agree, whenever requested by the Bank at my own cost to execute to the Bank a valid legal mortgage of such property in such form and with such power of sale and other provisions as the Bank may require for recovering the re-payment on demand of all moneys secured by this equitable mortgage. And I hereby also agree that so long as any money remain owing from me to the Bank to pay interest thereon to the Bank at the rate of % per annum. And I hereby declare that the documents now deposited are all that are in my possession or control, and that the property is not charged or encumbered in any way whatsoever.

As witness my hand this..........day of............19....

The schedule above referred to

Witness (*Customer's Signature*)

FORM No. 33 (b)

MEMORANDUM OF DEPOSIT OF THE TITLE DEEDS BY A PERSON TO SECURE THE ACCOUNT OF ANOTHER PERSON.

I, the undersigned of , in consideration of the Bank, Limited, hereinafter called "The Bank" opening or (continuing) an account with of hereinafter referred to as "the Debtor," hereby acknowledge that I have this day deposited with the Bank the documents specified in the Schedule hereto as a security for the payment on demand by the Debtor to the Bank of all moneys and liabilities already advanced, paid or incurred to or for the Debtor by the Bank, or which the Bank may at any time advance, pay or incur to or for the Debtor, either solely or jointly with any other person or persons as partners or otherwise, whether on balance of account, or by the discount or otherwise in respect of bills of exchange, promissory notes, cheques, and other negotiable instruments, or in any manner whatsoever, and including interests with half-yearly rests, commission and other banking charges, and any law costs incurred in connection with the account. AND I hereby further agree with the Bank, their successors and assigns, that whenever requested by the Bank at my own expense to execute to the Bank a valid legal mortgage or charge by way of legal mortgage of the property comprised in and affected by the said documents or any of them and intended to be included in this equitable mortgage unto the Bank, the said legal mortgage or charge by way of legal mortgage to include such power of sale and other provisions as the Bank may require for securing the payment on demand of the

FORM No. 33(b)—*concluded.*

principal moneys and interest to be thereby secured. AND I also agree that so long as any moneys advanced to the Debtor remain unpaid, to pay interest thereon to the Bank at the rate of per cent. per annum. If the debtor shall become bankrupt or insolvent or enter into any arrangement or make any composition with his creditors, the Bank, shall be at liberty (notwithstanding payment to the Bank by me or any other person of the whole or any part of the sum secured) to rank as creditor and prove for the full amount of its claim, and the Bank shall be at liberty to renew any bills, notes or other securities, which the Bank may then or thereafter hold or be entitled to, against the estate of the debtor, or to agree to and accept any composition in respect of the same. AND I will not by paying off the sum secured or upon any other ground prove, or claim to prove, in respect of the sum secured or any part thereof, until the whole of the Bank's claim against the debtor has been satisfied and the Bank may and shall receive and retain the whole of the dividends, compositions, or other payments thereon, and I shall not be entitled to claim or have the benefit of any such proof, dividends, compositions, or payments or the benefit of any other security held by the Bank in reduction of the amount secured by me or otherwise until they have received the full amount due from the said debtor. And the Bank may enforce and recover upon this security the full amount hereby secured and interest thereon notwithstanding any such proof or composition as aforesaid, and notwithstanding any other security or remedies which they may hold or be entitled to in respect of the sum intended to be hereby secured or any part thereof, and notwithstanding any charges for interest which may be debited in the account current with the debtor, or in any other account upon which he may be liable.

Dated this....................day of....................19....

(*The Schedule above referred to*).

Signature of Depositor and witness.

FORM No. 33 (c)

AFFIDAVIT REGARDING PROPERTY BEING SELF-ACQUIRED.

In the Court of the Magistrate,

In the matter of Deposit of Title deeds of premises No..............with..............as security for advances from them.

We............and............solemnly affirm and declare:—

1. That we commenced business as....................under the name and style of................at..............in the town of................with our own self-acquired money and our own unassisted endeavours without the help of any joint or ancestral nucleus.

2. That out of the profits of the said business, which consisted entirely of our own self-acquired money we............purchased the premises No............

3. That we............are the sole and absolute owners of the said premises No. ....and that we have no co-sharers or co-parteners in respect of the premises mentioned above and that the same is not either ancestral or joint family property but is our self-acquired individual property, over which we have full power of disposal.

4. That the premises mentioned above are not subject to any mortgage, charge, attachment, lis pendens, lien, trust, annuity, debutter liability, judgment, judgment-debt, or any incumbrances of any kind whatever and are not affected by any scheme or alignment of the Corporation of............or the............Improvement Trust or any Land Acquisition notice.

FORM No. 33 (d)

AFFIDAVIT REGARDING A MOHAMMEDAN'S PROPERTY BEING FREE FROM WAQFS, ETC.

Before the............Magistrate.............District.
In the matter of premises No........

AFFIDAVIT.

I................son of............Mohammedan trader resident at............ in the town of............solemnly affirm and say as follows:—

1. That I am a Mohammedan, belonging to the Sunni/Shiah sect and............ subsect.

2. That I am the sole and absolute owner of the property comprised in premises No...........fully described in the Schedule "A" hereunto annexed, having acquired same by purchase from............on............with money out of my own funds.

3. That I carry on business at..........under the name and style of.......... which business solely and absolutely belongs to me.

4. That being in want of money for the purposes of my business, I applied to the ....Branch of the................for a loan of Rs.................which was sanctioned to be granted to me, as an overdraft accommodation on the basis of my application.

5. That the property described in Sch. "A" is free from encumbrances of any description, and that no part of same is charged with the payment of any dower-debt or transferred or agreed to be transferred for the purpose of any " hiba-bil-iwaz," " hiba-ba-shart-ul-iwaz," " areeat," " Sadakh " or any other form of " hiba " or for the purpose of any " waqf" private or public, or for the benefit of " khankah " or a " takia."

6. That I have neither done, nor caused or suffered to be done, any act or deed whose effect is to hinder me from creating an equitable mortgage in favour of............by deposit of title-deeds mentioned in Sch. "B" (which are the only title-deeds relative to the said property described in Sch. "A") to secure repayment of the said sum of Rs....... which............has agreed to lend me.

And I make this declaration, etc.

FORM No. 34

LETTER REMINDING DEMAND OF PAYMENT.

To

.19.

DEAR SIR,

With reference to your Loan / Overdraft / Cash Credit account against the security of stocks consisting of...in our effective possession, we beg to inform you that we have already intimated to you that the settled margin of....% is not being maintained and demanded payment of Rs.............to bring the account in order and within the margin agreed. It is a matter of regret that you have so far taken no steps to pay in the amount demanded. We are sorry, we are unable, under the cirmumstances to allow the continuation of the account. On the said account the sum of Rs....... with interest calculated upto........is due which along with further interest @...... upto the date of actual payment must be paid within......from the receipt of this letter, failing which we shall thereafter on any day sell the stocks pledged with us by public auction or private contract as we consider best and apply the net proceeds of such sales towards the above amount due to us and further interest and charges that may be incurred.

Should the net sum realized by such sales be insufficient to cover the full amount due to us you will be liable to pay such deficiency.

We have full confidence, however, that you will be good enough to settle the matter within the aforesaid time, and will thereby preclude the contingency of a forced sale.

Yours faithfully,
Manager.

FORM No. 35

BILL OF LADING (Simple Form).

SHIPPED in good Order and well conditioned by..................in and upon the good Steam Ship called the..................whereof..................is Master for this present Voyage and now lying in..................and bound for....................

........................being marked and numbered as in the Margin and are to be delivered in the like good Order and well conditioned at the aforesaid Port of............ (the Act of God, the King's Enemies, Fire, Machinery, Boilers and Steam and all and every other Dangers and Accidents of the Seas, Rivers and Steam Navigation, of whatever nature and kind soever excepted) unto..................or to..................Assigns........ Freight for the said Goods..................with primage and Average accustomed.

IN WITNESS whereof the Master or Purser of the said Ship hath affirmed to........ Bills of Lading all of this Tenor and Date the one of which Bills being accomplished the others to stand void.

Dated in....................19....
Weight and contents unknown.

For the Master.

FORM No. 36

DOCK WARRANT.

No...

.DOCKS CO.

Date ......19...

Warrant for..........imported in the ship. ....Master................ from............entered by............on the............deliverable to.......... or assigns by indorsements hereon. Rent commences on the............and other charges from the date hereof.

Rate Charged.

Mark.	Numbers.	Weight. Gross.	Weight. Tare.

Ledger No............ *Folio*..

.....................*Clerk*.

............*Warrant Clerk*.

FORM No. 37

WAREHOUSE-KEEPERS' CERTIFICATE.

NO.........
Not transferable.
MESSRS.
We hold at your disposal in our warehouse as per conditions on back hereof,........
....................ex. S. S.....................

Warehouse-Keepers.

(Conditions regarding the issue of delivery orders, payment of rent, etc., are generally printed on the back of the form.)

FORM No. 37 (a)

DELIVERY ORDER.

No.........
To

..................19....

Please deliver to...............the undernoted goods, entered by..............on ....in the ship............Captain............from..............Charges from............to be paid.
Mark.....................
No.........
Contents..................

FORM No. 38

POWER OF ATTORNEY TO SELL A PARTICULAR PROPERTY, TO RECEIVE PURCHASE MONEY AND EXECUTE CONVEYANCE.

By this Power of Attorney, I, A. B. of etc., hereby appoint C. of etc., my attorney in my name and on my behalf to do or execute all or any of the instruments, acts, things hereinafter mentioned, that is to say:—

1. To sell my bungalow No.......situate at...........to any purchaser at such price as may be agreed upon and which my attorney in his absolute discretion thinks fit.

2. To receive from the purchaser the price agreed upon and to give an effectual receipt or discharge for the same.

3. In my name and as my act and deed to execute necessary or proper conveyance of the said property to the said purchaser or to his assigns as he may direct.

4. To present for registration the said conveyance and to admit receipt of consideration before the Registrar and to have it registered and to do all acts, things and deeds which my attorney shall consider necessary or proper for or in connection with the conveyance of the said property to the said purchaser as fully and effectually in all respects as I could myself.

5. And I agree to ratify and confirm all and whatsoever that my said attorney shall lawfully do or cause to be done by virtue of this Deed.

In witness, etc., etc.

FORM No. 39

GENERAL POWER OF ATTORNEY TO TWO OR MORE PERSONS.

By this Power of Attorney, I, A. B. of etc., hereby appoint C. of etc., and E. of etc., jointly and every two or more or each of them severally my attorneys or attorney in my name and on my behalf to do and execute all or any of the acts and things following, namely:—

I. To demand, collect and receive and give effectual *bona fide* discharge of, in my name and on my behalf, all debts, advances and claims due to me. They shall further have power to take and use all lawful proceedings and means of recovering and receiving the said debts, advances and to commence and to prosecute and to defend at law all actions, suits, claims, demands and disputes and to refer to arbitration and adjust and settle and to-

FORM No. 39—*Concluded.*

compromise all accounts, suits, claims and demands and for all or any of the purposes aforesaid to do and execute such instruments or things as shall be thought necessary or expedient.

II. To borrow from time to time such sums of money and upon such terms as the said attorney or attorneys may think fit upon the security of any of my property whether moveable or immoveable and for such purpose to execute such mortgages, charges, pledges or other securities upon such covenants, terms and conditions as may be thought proper.

III. To sell, exchange, surrender, lease or dispose of any houses, buildings, land, belonging to me or held by me and to transfer, release any mortgages, or also to execute or enforce any powers of sale or other powers under any such mortgages or charges or otherwise to realize or obtain the benefit thereof in such manner as may be thought expedient.

IV. To invest any of my monies upon such investments as my attorneys or any one of them may in their or his absolute discretion think fit with power from time to time to vary any investments and pending investment to deposit any of my monies at any Bank.

V. To draw, accept, endorse, negotiate, retire, pay, any bill of exchange, promissory note, cheques or other negotiable instruments which my attorneys or attorney deem necessary or proper relative to my affairs.

VI. To operate any banking account opened by me, to open and operate any fresh banking account at any Bank which my attorneys or attorney think proper and expedient.

VII. To give on lease of any kind any part of my immoveable property and to demand, sue for and collect and receive and give effectual discharges for the rents and profits now due and henceforth to become due in respect thereof and to take all lawful proceedings for recovering the said rents and for enforcing performance of any covenants and agreements with the lessee and for ejecting the tenants and for recovering damages from them for non-performance of any covenant or agreement of tenancy.

VIII. To take property on lease for and on my behalf and execute the necessary leases with such covenants as my attorney thinks fit in favour of the lessor.

IX. To pay calls upon shares belonging to me and to vote at any meeting of any company of which I am a shareholder.

X. To appoint and remove any agent or substitute for me in respect of any of the matters respecting my estate which my attorneys or attorney think fit.

XI. Generally to do all such acts and things as my attorneys or attorney shall think expedient for the purposes aforesaid as fully and effectually in all respects as I could do myself.

And I, the said A. B. hereby undertake to ratify and confirm all and whatever my said attorneys or attorney shall lawfully do or cause to be done by virtue of this DEED.

In Witness whereof I have set my hand in the presence of witnesses.

Signature of witnesses. Signature of A. B.

FORM No. 40

INDEMNITY FOR LOSS RESULTING FROM DELIVERY OF SHARE CERTIFICATE WITHOUT PRODUCTION OF TEMPORARY RECEIPTS ISSUED BY THE COMPANY.

To

.... *Dated*..................

....................Ltd.

....

DEAR SIRS,

I beg to inform you that I have lost, misplaced or accidentally destroyed my Share Transfer receipt No............and............in respect of...shares Nos.........: ....; in the....................Company Limited and in consideration of the Company issuing to me certificates for the above shares notwithstanding the non-delivery of the said share transfer receipt, I hereby indemnify the Company against all costs, expenses, etc., that may be incurred by the Company in consequence of the non-delivery of the said receipt or in consequence of any claim which may be made by or on behalf of any person holding the said share transfer receipt.

Yours faithfully,
Shareholder.

FORM No. 41

CONFIRMATION OF ACCOUNT.

..........................Bank, Ltd.

No....... ....Office.

Dated.........19....

To

....

....

....

Dear Sir,

I shall be obliged if you will kindly sign and return to me at your early convenience the annexed form certifying the correctness of your................account, showing a balance of Rs.............in our favour on................19....

Yours faithfully,

Accountant. Manager.

Dated.........19....

To

The Manager,

....................Bank, Ltd.

....

Dear Sir,

I am/We are in receipt of your letter No...... dated...................and in reply thereto I/we beg to state that I/we find the sum of Rs...................

..........shown therein to my/our debit on the...................to be correct.

I am/We are, Dear Sir,

Yours faithfully,

Signature......................

Address.........................

FORM No. 41 (a)

ANOTHER FORM FOR CONFIRMATION OF ACCOUNT.

.........................Bank, Ltd.

....

Bombay-.............19..

Dear Sir,
Madam,

We beg to inform you that your current account made up to the............19.... as per statement attached shows balance in your/our favour of Rs.................

We shall be glad to receive your confirmation on the annexed form.

Yours faithfully,

For...................Bank, Ltd.

....

Accountant.

....

....

....

FORM No. 41 (b)

Form for Customer's Reply.

This form should be completed and returned to..........................Bank Ltd., in the special envelope enclosed herewith in which no other correspondence should be closed.

L. No.
F. No.

..........................19....

The Manager,

....................Bank Ltd.,
Bombay.

Gentlemen,

I beg to acknowledge receipt of your letter of..................19....and hereby confirm the balance of Rs........................standing to the Credit/Debit of my account on........................19....

Yours faithfully,
Signature ....
Designation ....
Address ....

FORM No. 42

Customer's Instructions for the Purchase or Sale of Stocks and Shares*.

....

Dated ....19....

To

..........................Bank Limited,
....

Gentlemen,

Please instruct your brokers to buy/sell for cash/for account

Particulars of the securities

....
....
....
....

at $\frac{\text{not over}}{\text{not under}}$ Rs.............. $\frac{\text{per cent.}}{\text{per share}}$.

To be registered in the name of..
Now standing in the name of..
(Give full name)
Occupation ....
Address..
(Please give precise address)

And $\frac{\text{charge}}{\text{credit.}}$ proceeds of same to the Account of..

....

This order to remain in force until { cancelled in writing. / Date.............. }

Yours faithfully,

(Signed) ....

N.B.—If a purchase, this order should be signed by the person whose account is to be debited with the cost. If a sale, it should be signed by all the parties in whose names the securities are registered; or, if they are unregistered, that is, transferable by mere delivery, by all those who are represented to be the owners.

*Adapted from English Practical Banking by T. B. Moxon.

FORM No. 43

APPLICATION FORM FOR SAFE CUSTODY OF ARTICLES.

Safe Custody R. No.	Manager

To

The Manager,

.... Bank Limited,

....

Dear Sir,

I beg to request you to please take charge of the sealed........................ labelled...which I have this day deposited with you. I agree that you shall not incur any liability or responsibility in the event of the loss or destruction of the same or part thereof by Dacoity, Fire or other accident *vis major* over which the Bank has no control. I also agree that I shall take delivery of the same if so equired by the Bank by giving me........................'s previous notice, and in e I do not take delivery of the articles deposited, as aforesaid, the Bank shall be absolutely absolved of all risks and responsibility for loss or destruction of whole or part from any cause whatsoever. The box bears seals with monogram........

The conditions given on the reverse have been read by me.

Please mention here any special instruction regarding the delivery of the Box.

....

....

Signature of the Depositor........................

Full Address..

Yours faithfully,

Dated..............   ....

[The following Conditions are printed on the reverse].

Conditions.

1. Sealed boxes, for the contents of which the Bank will not be responsible, will only be accepted for deposit. Seal to be used should be of the Depositor, and not that of the Bank.

2. A fee of Rs..................for the first year or part thereof, and Rs......... for each subsequent year or part thereof, shall be charged for each box measuring......"x" ...."x........" at the utmost. For bulkier boxes higher fees shall be charged at the discretion of the Manager.

3. The receipt is issued on the express condition that in the event of the loss or destruction of the safe custody box or any part thereof by Dacoity, Fire or other accident or *vis major* over which the Bank has no control the Bank shall not be under any liability or responsibility in respect thereof. The Bank reserves to itself the right of cancelling this contract of deposit by giving a..................'s notice in writing, and the depositor shall take back the box during this period. In case the same is not taken delivery of within the time allowed, the Bank shall not be liable or responsible for loss or destruction of whole or part from any cause whatsoever. The safe custody box will remain under the lien of the Bank for any indebtedness individually or jointly.

FORM No. 44

SPECIMEN RECEIPT FOR SAFE CUSTODY ARTICLES.

The Security referred to herein can only be given up on the surrender of this receipt bearing the signature of the depositor at the foot thereof, or, if unable to attend personally, to the authority endorsed at the back.

It is particularly requested that wherever possible personal application should be made.

No................

................Bank Limited,
................Branch................19

Received from.......................

Cert. No................for..................

Per pro..........................Bank Ltd.,
....

Received from...Bank Limited the abovementioned............................

(Signature)...........Date......19....

N.B.—This receipt should be kept in a place of safety.
(Back of the Receipt).

To
The Agent,
...................................Bank Ltd.,
....

Please deliver to Bearer the.......................mentioned on the other side.

Signature ....
Residence ....
Date ... .

FORM No. 45

SPECIMEN RECEIPT FOR SAFE CUSTODY ARTICLES BY TWO OR MORE PERSONS WITH ACCESS FORM.

Name(s)...................................Rental Rs.......................
Address(es)...................................From ....
....S/O No. ....
....
....
Specimen Signature(s)...........................Key No.................
Telephone No..Safe No...............

ACCESS AUTHORIZED TO :—	WHO WILL SIGN AS FOLLOWS :—
....	....
....	....
....	....
....	....

....

FORM No. 46

DOCUMENTARY LETTER OF CREDIT.

.........................Bank Ltd,

No................ ....
Rs............ Date....................

To...........................
....

Dear Sir,

You are hereby authorized to draw drafts upon this bank at..........days' sight to the extent in all of Rs.................(Rupees...............................only) for invoice cost of goods to be shipped to...........................of...................

FORM No. 46—*Concluded.*

This credit expires, unless previously cancelled, six months from date. All drafts against it must be drawn and duly advised to us before that date, accompanied by Invoice, Bills of Lading issued to the order of the shipper and indorsed in blank, and Marine Insurance Policies or Certificates.

Particulars of all drafts drawn under this Credit must be indorsed on back hereof, and the bills must specify that they are drawn under Credit No........................... dated...........................19

We hereby engage with the drawers indorsers, and *bona fide* holders of drafts drawn under and in compliance with the terms of this Credit, that against surrender to this Bank of the abovementioned documents in order, the said drafts shall be duly accepted payable, in.........................., on presentation in order; and that they shall be duly honoured on presentation in order at maturity.

We are,
Yours faithfully,
For.......................Bank Ltd.,
....
Manager.

FORM No. 46 (a)

CLEAN LETTER OF CREDIT.

No.............   ....Bank Ltd.,
....
Date.................

To....................................
....

Dear Sir,

You are hereby authorized to draw drafts upon this bank at............days' sight to the extent in all of Rs............, (Rupees..............only) and we hereby engage with the drawers, indorsers and *bona fide* holders of all drafts drawn under and in compliance with the terms of this Credit, that the same shall be duly accepted payable in ...., on presentation in order, and that they shall be duly honoured on presentation in order at maturity.

This credit shall remain in force for six months after this date. The particulars of all drafts drawn against it must be indorsed on the back hereof, and the bills must specify that they are drawn under Credit No............., of the.............day of........... 194....

We are,
Yours faithfully,
.....................Bank Ltd.
....
....Manager.

FORM No. 46 (b)

CONFIRMED CREDIT.

A.B.C. Bank Limited, Bombay.

....19....
....

Dear Sirs,

CONFIRMED CREDIT No.........
(which please quote).

We beg to inform you that we have received advice from........................ that they have opened with us a confirmed credit in favour of........................ by order and for account of...to the extent of Rs................(say................) valid until..........................and available by your drafts on us at...   accompanied by
....

FORM No. 46 (b)—*Concluded.*

Invoice	Weight Note
Consular Invoice	Certificate of Origin
Full set " Shipped "	Insurance Policy or Certificate
Bills of Lading to " Order "......	Covering Marine and War Risks

all relative to a Shipment of..
per s.s.................from............to............in..................................
shipment(s), consigned to.............................before.........................

All drafts drawn under this credit must contain the clause " Drawn under B/c No............dated................" and we hereby undertake to honour such drafts on presentation provided that they are drawn and presented in strict conformity with the terms of this credit.

Yours faithfully,

Countersigned.— ....Manager.

....

FORM No. 46 (c)

CREDIT WHICH DOES NOT CARRY CONFIRMATION AND IS SUBJECT TO CANCELLATION WITHOUT NOTICE.

A. B. C. Bank Limited, Bombay,

....19....

....

*Advice of Negotiation Credit No.............(which please quote), which does not carry out confirmation and is subject to cancellation without notice.

Dear Sirs,

We beg to inform you that we have been advised by..........................
that they have issued their...............credit in favour of.......................
by order and for account of..............to the extent of Rs......................(say)
...............valid here until.....................and available by draft at......
................drawn on...................with........................recourse,
to be accompanied by –

Invoice	Weight Note
Consular Invoice	Certificate of Origin
Full set " order " " Shipped "	Insurance Policy or Certificate Covering
Bills of Lading to	Marine and War Risks

Order ....
all relative to a shipment of...
....
....
per S.S...................from................to..................before....
...................consigned to..
....

All drafts drawn under this credit must contain the clause " Drawn under B/c No..... dated................."

We are requested to negotiate drafts drawn in accordance with the terms of this credit but this advice is given for your guidance only, and does not convey any undertaking on the part of the Bank to negotiate such drafts.

Yours faithfully,

Countersigned............. ....Manager.

....

---

*Printed in ink of a distinctive colour to call special attention to this disclaimer of liability.

FORM No. 47

CIRCULAR LETTER OF CREDIT.

Not available after................19....

..........................Bank, Ltd.

No...........

Rs..........

Date.

Gentlemen,

This letter will introduce to you...............to whom you will please furnish such funds as..................may require up to the aggregate amount of.......... rupees against sight drafts drawn on this office, which please negotiate at your buying rate for bankers' cheques on............ Each draft must be plainly marked as drawn under this Letter of Credit No.......and must be signed in accordance with the specimen signature which is on our Letter of Indication of the same number to be produced herewith.

We engage that such drafts shall be met with due honour if negotiated within........ months from this date.

The amount of each draft must be inscribed on the back of this letter. This letter must be cancelled and attached to the last draft drawn.

Gentlemen,

Yours faithfully,

To

Messrs. The Bankers mentioned in the Letter of Indication which must be produced herewith.

N.B.—The bearer, for purposes of security, is requested to carry this Letter of Credit apart from the letter of Indication.

The reverse side of the Letter of Credit is as follows :

Date.	By whom paid.	Amount paid.	Amount in figures.

FORM No. 47 (a)

LETTER OF INDICATION.

(To accompany Circular Letter of Credit).

..........................Bank Ltd.

....

Date...............

No................

To

Messrs. The Bankers mentioned in this Letter of Indication.

Gentlemen,

The bearer of this letter is................in whose favour we have issued our Letter of Credit No..................Recommending..................to your attention and referring you to the specimen signature below.

We are, Gentlemen,

Yours faithfully,

Specimen Signature.

N.B.—This letter should be retained by the holder until the relative Circular Letter of Credit is exhausted, when it must be surrendered to the banker making the last payment.

FORM No. 47 (b)

FORM OF CAUTION NOTICE UPON LOSS OF A CIRCULAR LETTER OF CREDIT.

When a Circular Letter of Credit is lost and the beneficiary informs the issuing bank of its loss, the issuing bank usually sends to its branches and correspondents the following Caution Notice.

................BANK LIMITED

......................19

THE MANAGER,

....................BANK LTD.,

DEAR SIR,

We have been informed that our Circular Letter of Credit, the details of which are given below, was lost and that the relative Letter of Indication has been consequently cancelled.

We have therefore to request that you will kindly take charge of this Letter of Credit and hold it if it comes to be presented at your office, and forward it to us.

Particulars of the Letter of Credit.

Number.	Date of Issue.	Name of the Beneficiary.	Amount.	Date of Expiry.

Yours faithfully,

....

Manager.

FORM No. 48

CIRCULAR NOTE.

..............................Bank Limited

No............ ....

Date......................

Circular Note for..............................only.

Gentlemen,

This Circular Note should be presented to you by.......................whose signature appears on our Letter of Indication No...............with which $\frac{\text{he}}{\text{she}}$ has been furnished. Please pay $\frac{\text{him}}{\text{her}}$ or $\frac{\text{his}}{\text{her}}$ order the value of...................................at the current rate of exchange.

Rs.............

We are, Gentlemen,

Yours faithfully,

To the Branches and Correspondents of the Bank.

...........................Bank Ltd.

General Manager.

(On the Back is printed)

To the....................Bank Limited.

Rs............. ....

At sight pay to the order of............Rupees............for value received at the rate of......................

(Holder's signature)....

(Date)...

FORM No. 48 (a)

LETTER OF INDICATION (TO ACCOMPANY CIRCULAR NOTES).

The....................Bank Limited,

No.........

....
(Date)..............

To the Branches and Correspondents of the Bank named in the following pages.

Gentlemen,

This Letter of Indication has been issued to Mr./Mrs./Miss......................who holds our Circular Notes, Numbered..............to.............., payable at our head office,

We request you to purchase any of these notes presented to you for encashment at the current rate of exchange for sight drafts on...................., on their being endorsed in your presence in accordance with the specimen signature given below.

Specimen Signature,
....

We are, Gentlemen,
Your Obedient Servants,
..................Bank Ltd.,

General Manager.

IMPORTANT.

IT IS ABSOLUTELY IMPERATIVE THAT THE HOLDER SHOULD IMMEDIATELY ON RECEIPT OF THIS LETTER OF INDICATION AND RELATIVE CIRCULAR NOTES AFFIX HIS OR HER SIGNATURE TO THE LETTER OF INDICATION AS A PROTEST AGAINST FORGERY SHOULD THE CIRCULAR NOTES FALL INTO IMPROPER HANDS, AND THE LETTER OR INDICATION SHOULD ALWAYS BE KEPT APART FROM THE CIRCULAR NOTES.

THE LETTER OF INDICATION SHOULD BE RETAINED BY THE HOLDER UNTIL ALL THE NOTES HAVE BEEN CASHED WHEN IT MUST BE SURRENDERED TO THE BANKER CASHING THE LAST NOTE.

FORM No. 49

TRAVELLER'S CHEQUE.

Payable in all countries of the World.

Payable within twelve
months from
(Date)..................

No............

Drawers Endorsement.......................
(To be signed in the presence of the Paying Agent).

To
The......................Bank Limited,

Pay Self or Order ....

Signature of Drawer...................

Witness to Signature of Drawer } ....

Manager.

Ten Pounds.

£10/-/-
or the equivalent abroad at the current rate of exchange.

....
Branch

FORM No. 50

CREDIT VOUCHER. CLEARING HOUSE.

Settlement At The Bankers' Clearing House

..................19....

To The Cashier of the Reserve Bank of India.

Be pleased to CREDIT Our Account the sum of

....

out of the money at the credit of the Account of the Bankers' Clearing House

Rs..

Seen by me.

..................Inspector, Bankers' Clearing House

Settlement At The Bankers' Clearing House

The Reserve Bank of India.

....19....

The account of Messrs..............................

has this evening been CREDITED with the sum of

....

....

out of the money at the credit of the Clearing Bankers.

For The Reserve Bank of India.................

....

FORM No. 50 (a)

DEBIT VOUCHER. CLEARING HOUSE.

Settlement At The Clearing House

Bombay.....................19....

To The Cashier of the Reserve Bank of India,

....

Be pleased to TRANSFER from our Account the sum of..

and place it to the credit of the Account of the Bankers' Clearing House and allow it to be drawn for, by any of them (with the knowledge of the Inspector, signified by his countersigning the Drafts.)

....

Rs

Settlement At The Bankers' Clearing House

The Reserve Bank of India

..................19....

A TRANSFER for the sum of....................

....

has this evening been made at the Bank, from the account of..............................Bank Ltd. to the Account of the Clearing Bankers.

For the Reserve Bank of India....................

....Manager

This certificate has been seen by me..............

............Inspector.

...........................Bankers' Clearing House.

FORM No. 51

STOCK ANALYSIS FORM.*

Name of Stock to be analysed :

1. Name of the Company and date of incorporation..
....
....
2. Total Capital of the Company...
3. Amount of Capital ranking in front of stock under analysis..........
....
....
4. Amount required to pay dividends on above..
....
....
5. Amount of Capital ranking after stock under analysis.......................
....
....
6. Amount required to pay dividend on above.......................................
....
....
7. Price of Stock...
8. Yield per cent...
9. Highest and Lowest Price during last five years.............................
....
....
10. Dividends during last five years...
11. Dates when dividends are payable...
....
12. Reserve Fund...
13. Amount carried forward as at last Balance Sheet.............................
14. Gross Profits...
15. Cash at Banks...
16. Remarks...

*Safety of Capital by E. M. Harley.

FORM No. 52

FORM OF EXPORT CREDIT.

Credit No. ....
Cabled ....
.................................19....

CREDIT

.... BANK LIMITED.

Application for Credit.

DEAR SIRS,

$\frac{\text{We}}{\text{I}}$ hereby request you to open by $\frac{\text{mail}}{\text{cable}}$ on our behalf an $\frac{\text{irrevocable}}{\text{revocable}}$ credit $\frac{\text{with}}{\text{without}}$ recourse to $\frac{\text{drawee}}{\text{drawers}}$ in the amount and available as follows :—

You will instruct your branch at.........................to purchase the drafts of...$\frac{\text{with}}{\text{without}}$ recourse to them to the extent of...........................the drafts, to be drawn on $\frac{\text{us}}{\text{me}}$ at.................... $\frac{\text{months'}}{\text{days'}}$ sight for.......................invoice. Cost of shipments purporting to be ....from.........................to................... in one or more shipments.

Marine and war risk insurance $\frac{\text{W.P.A.}}{\text{F.P.A.}}$ including usual warehouse to warehouse clause to be covered by $\frac{\text{undersigned}}{\text{shipper}}$.

Freight is to be prepaid and included in invoice.

FORM No. 52—*Concluded.*

Drafts are to be accompanied by shipping documents satisfactory to your said branch, bill of lading may be made out to the order of the......................Bank Limited or "To order" and blank endorsed, but must be dated not later than....................

In consideration of your having opened the above credit the undersigned unconditionally agrees as follows:—

To accept upon presentation all drafts drawn pursuant thereto.

To pay at maturity in legal tender of the place of payment at your office all drafts, drawn pursuant thereto, together with interest at your rate at time of negotiation of such drafts from date thereof to approximate due date of remittance in....................at the current drawing rate on the date of actual payment for the..................Bank, Limited, drafts at sight on................together with your commission for negotiation of drafts hereunder at the rate of................% per month during the currency of the drafts, with a minimum of..................%, and all expenses incurred by you in connection with said drafts or the relative merchandise.

1. Until the payment of every indebtedness and liability absolute or contingent which now is or hereafter may become due and owing by the undersigned to you in any transactions now or hereafter had with you, including transactions under other Letters of Credit, the undersigned agree that the title and ownership of all goods shipped under or in connection with the said credit or in any way relating thereto, whether or not released to the undersigned against trust or bailee receipt and/or of the proceeds of such goods and of all bills of lading, policies or certificates of insurance or other documents given therefor, shall be and remain, in you, and the undersigned hereby give you full power and authority at your discretion, by yourselves or through agents at any time to have and take possession thereof and of all policies or certificates of insurance thereon and proceeds of such policies, and certificates, and to hold and/or collect the same, or under the terms expressed below, to dispose thereof at any time, and irrespective of the maturity of the drafts or acceptances under the said credit.

2. In the absence of written instructions given by the undersigned, expressly to the contrary, the undersigned authorize you and your correspondents to receive and accept as "bills of lading" under the said credit, any documents issued by or on behalf of any carrier, including lighterage receipts, which acknowledge receipt of goods for transportation, whatever the specific provisions of such documents, and the date of each of such documents to be regarded as the date of bills of lading and/or shipment within the terms of the said credit. And the undersigned authorize you or your correspondents to accept on sufficiently evidencing "Insurance" under the said credit, either policies or certificates of such insurance.

3. The undersigned assume all risks of acts of users of said credits who are hereby accepted as the agents of the undersigned, together with all responsibility for the character, kind, quality, quantity, delivery or existence of the merchandise purporting to be represented by any documents and/or for any difference in character, quality, quantity, of merchandise shipped under this credit from that expressed in any invoice accompanying any of said draft, and/or for the validity, genuineness, sufficiency, form or correction of any documents, even if such documents should in fact, prove to be in any respects, incorrect, defective, irregular, fraudulent or forged, and/or for the time, place, manner or order in which shipment is made and/or for partial or incomplete shipment and/or failure or omission to ship any or all of the merchandise, referred to in the credit, and/or for the character, adequacy, validity or genuineness of any insurance, or policy or certificate of insurance or the solvency or responsibility of any insurer, or any other risk connected with insurance and/or for any delay, default, fraud or deviation from instructions of the shipper or any one else in connection with said merchandise or the shipping or other documents with respect thereto, and/or for delay in arrival or failure to arrive either of the merchandise or of any of the said documents, and/or for any breach of contract between the shippers or vendors and the undersigned, and the undersigned will hold you harmless from all loss or damage in respect of any such matters and from any and all damage and loss, whatsoever suffered by you by reason of any and all action taken by you or your said Branch in good faith, in furtherance of your above request or due to errors, omissions, interruptions or delays in transmission or delivery of any and all messages, by mail, cable, telegraph or wireless, whether or not the same be in cypher.

4. The undersigned agree to cause to be procured promptly the necessary import and export or other licenses for the said merchandise, and will keep the same adequately covered by policies or certificates of insurance to you or making the loss of or adjustment, if any, payable to you, at your option.

FORM No. 52—*concluded.*

5. And the undersigned agree to give you on demand any further or other security you may require, and further agree that any and all other funds, credits, instruments property and securities and proceeds thereof including also any and all collection items, and proceeds thereof now or hereafter handed to you or for any purpose left in your possession by the undersigned or for their account or at their disposal, or in transit to or from you by mail or carrier, for any of the said purposes, are hereby made security for this obligation, and also for any and all other obligations and/or liabilities, absolute or contingent, due or not due, which are or at any time be owing by the undersigned to you and may be held or disposed of as you may see fit, and applied toward payment of any and all such obligations and liabilities, all of which in the event of default by the undersigned in any part thereof, or of bankruptcy or insolvency, receivership or general assignment of the undersigned, shall subject to your option forthwith become due and payable and the undersigned hereby authorize you, if any obligation covered by this instrument or any other indebtedness due from the undersigned to you, shall not be punctually met forthwith without further demand or notice or advertisement of any kind, all of which are hereby expressly waived, to sell or otherwise, dispose of the whole or any part of said funds, credits, instruments, property and securities, arrived and/or to arrive at any broker's exchange or by public or private sale or otherwise, at your option, with permission yourselves to become the purchasers in whole or in part, without accountability save for the purchase price and/or liabilities of the undersigned to you however arising.

6. The receipt by you at any time of other collateral of whatsoever nature, shall not be deemed a waiver of any of your rights or powers relating to any collateral which you may hold at the time of receipt.

7. This obligation is to continue in force notwithstanding any change in membership of any partnership of the undersigned, whether arising from the death or retirement of one or more new partners or the accession of one or more new partners.

8. This letter of credit can be revoked or altered only with the consent of all parties interested.

9 That whenever shipments are made to other ports than Bombay, we shall retire the bills on or before the approximate date of arrival of the carrying vessel at destination.

10. The above credit expires on......................by which date shipments which are herein specified are to have been completed, but this engagement applies to all bills purchased not later than.........................

....

Signature.

Note.—If any special document (outside of what is usually termed shipping document) is required such as health, inspection or analysis certificate, or any special or unusual kind or class of insurances, such document should always be specifically mentioned.

FORM No. 53

SPECIMEN FORM OF CREDIT REPORT.

Copy to :—
Credit Report.

No...............

Give Details of
Credit Approved

Name ....

Address ....

....

We have approved the following credit within our discretionary limits.

Interest..................Commission ....

When due for revision.....................

FORM NO. 53—*continued*

Is the applicant an individual Trading Concern, Partnership or Joint Stock Company ? .. .. When established ?	
Name of the applicant ? .. .. .. (If the applicant is a partnership give the names of all the partners, and if a Joint Stock Company, the names of its officers).	
Has the applicant any outside means independent of his business ? .. .. .. (Similarly information must be supplied with respect to the individual partners of a Partnership or the Officers of a Joint Stock Company).	
If the application is supported by a gurantee, give the name, occupation and means of the guarantor or guarantors ?	
Have you any knowledge of the habits of the applicant ? .. .. What is his business reputation ? .. .. What is his business ability ? .. .. .. (Similar information must be supplied with respect to the individual partners of a Partnership or the Officers of a Joint Stock Company).	
Have you gauged the progress of the business ? .. .. Is there a fall from last year or growth ? .. If a fall, what do you attribute it to ? .. If an abnormal growth, what is your estimate of a chance of a set-back before the credit becomes due ?	
Name the goods or commodities in which the applicant is interested ? .. .. .. What is his main line ?	
What is the condition of the business generally in the line in which the applicant mainly deals ? .. .. Can you say from your books that there is an improvement in the general business in the line over last year ? .. .. In what months particularly does the business in the line get brisk ?	

1 Answers to Questions must be full and complete. Mere 'yes' or 'no' are no answers and will be disregarded.

FORM No. 53—*continued*

Is the applicant interested in any subsidiary concern ? .. .. What does it deal in ? .. .. .. Have you obtained any knowledge of its financial position ?	
Why does the applicant want this loan ? .. When and how is it to be repaid ? .. .. From what source is it to be repaid ? ..	
Has the applicant been already allowed any credit ? (State the extent and include here any contracts for foreign exchange bought and sold for future delivery). When is it due to be repaid ?	
What is at the moment the total liability of the applicant to the Bank ? .. .. (Here must be included the amount of bills drawn on the Bank; the amount of bills discounted with the Bank and the amount of any foreign exchange, contracts, etc.) What securities does the Bank hold ? ..	
What is the average amount of bills which the applicant draws, say in a month ? .. Are all the bills discounted with you met regularly at maturity ? .. .. .. What is the average amount of bills which the applicant accepts, say in a month ? Does the applicant promptly pay for all the bills accepted payable at the Bank ? ..	
Does the applicant promptly supply any margins when required to do so ? .. Was the applicant at any time granted a loan for which the Bank did not hold any security ? .. .. Was it promptly paid ? .. .. .. When did the applicant last hold a clear credit balance with the Bank and for how long ?	
Is the applicant in any way indirectly liable to the Bank ? .. .. If yes, how and for how much ?	
What is the average balance of the applicant in Current Account ?	
What is the value of the security offered for the present application ? .. .. .. Do you certify the value ?	

FORM No. 53—*Concluded.*

Has the applicant been granted any credits by other Banks ?	
Have you interviewed the applicant ? .. Did you have any interviews with his creditors ? .. .. Did you check and verify his statements by outside information ? .. .. .. (Say yes or no and append to this report a complete report of all the particulars of your inquiry).	
Was the applicant a customer of another Bank ? If so, which ? .. .. .. Why does he want to transfer the account to this Bank ?	
Was the applicant at any time insolvent ? .. Did he at any time compound or compromise with his creditors ?	
What is the value of the applicant's account to the Bank ?	

General Remarks.

Credit Committee (if any).

....
Manager.

Head Office Signatures.

Note :—In order to expedite action on an application it is requested that this report should be supplied complete, made in clear and concise terms. Use of technical language should be avoided as far as possible.

There must be attached hereto full particulars of interviews, with the applicant, creditors of the applicant and any outside parties with whom the applicant has had business relations.

Additional information in General remarks should include besides the applicant's reputed worth, any safe custody deposits, etc. held on behalf of the applicant. Further particulars will be given by letter.

FORM No. 54

PROMOTING BANK PERSONNEL.

Please complete and return to the Personnel Department.

PERSONAL REPORT.

Date...................

Name..Department ....

Position or nature of work...

....

1	☐ Enthusiastic Worker	☐ Interested	☐ Lacks Interest
2.	☐ Very Tactful	☐ Average Degree	☐ Lacks Tact
3.	☐ Very Courteous	☐ Average Degree	☐ Rude
4.	☐ Self Confident	☐ Fairly so	☐ Lacks Confidence ☐ Over Confident
5.	☐ Exceptionally Rapid	☐ Ordinarily so	☐ Slow
6.	☐ Exceptionally Accurate	☐ Ordinarily so	☐ Inaccurate
7.	☐ Exceptional Aptitude	☐ Ordinary	☐ Lacking in Aptitude
8.	☐ Very Pleasing Personality	☐ Good	☐ Unattractive.
9.	☐ Very Thorough Workman	☐ Fair	☐ Careless
10.	☐ Gives Excellent Co-operation	☐ Satisfactory	☐ Antagonistic
11.	☐ Unusual Initiative	☐ Good	☐ Lacking
12.	☐ Marked Executive Ability	☐ Fair Amount	☐ No Evidence

Summary

13.	☐ Exceptionally Fine Aptitude	☐ Satisfactory	☐ Unsatisfactory
14.	☐ Exceptional Workman	☐ Average Workman	☐ Poor Workman

Department Head's Remarks..

....

....

....

The Division Head is to Approve the above ratings or make any necessary revisions in them. ....

Department Head.

*American methods of Recruiting, Training and Promoting Bank Personnel, by L. Le M. Mouty.—"Journal of the Institute of Bankers", May, 1922.

FORM No. 54—*concluded.*

REPORT BY DIVISION HEAD.

1. General Remarks including mention of any outstanding good or bad qualities.

....

....

....

....

....

....

2. Any suggestions regarding Promotion, Transfer, etc ....

....

....

....

INFORMATION TO KEEP RECORDS UP TO DATE.

3. Is Employee married? ....

Children? ....

Other Dependents? ....

4. Correct Address? ....

Residence Telephone Number? ....

If Employee has no Residence Telephone Number, is there any nearby Telephone which could be used in an emergency? ....

....

....

Division Head.

The degrees of efficiency indicated are merely ticked. The squares are used for the purpose of placing the tick marks.

"Of course no two departmental heads interpret the same degrees of efficiency alike..................................The head of the Administration Department, however, gets to know which heads of departments take a liberal view of degrees of efficiency and which are more sparing in their recommendations. In interpreting reports and comparing them with reports from other departments he shades his opinion and allows for individual bias."

FORM No. 55

A LIST OF PRINCIPAL BOOKS OF ACCOUNT USED IN A BANK IN ENGLAND.*

I. Cash Section.

(a) Coin, Notes and Cheques.

(1) Cash Book.

This is also called the Counter Cash Book, Teller's Cash Book, Specie Book, Received and Paid Cash Book.

When two sets of Cashiers are employed for receiving and paying, their books are sometimes called Receiving (Cashier's Book), and Paying (Cashier's) Book.

(b) Analysis of Coin and Notes.

(2) Coin Balance Book.

(3) Bank Note Register, or Goldsmith's Book.

(4) Cash Balance Book, Cash Summary Book, or Money Book.

---

* Bank Organisation, management and Accounts by J. F. Davis.

FORM No. 55—*concluded*.

(*c*) Analysis of Cheques.

(5) Waste Book, or Remittance Book.
This is sometimes divided into two books, the Received Waste Book and the Paid Waste Book, which are also called the Received Day Book and the Paid Day Book.

(6) Clearing Book.
(7) Clearing Balance Book.
(8) Suspense Account.

II. Bills Section.

(*a*) Bills Discounted.

(1) Bill Register.
This is also called Bills Discounted Book, Bills Received Book, Discount Register, Discount Cash Book.

(2) Bill Diary.
This is also called Bill Journal, or Daily List.

(3) Bill Ledger, or Discount Ledger.

(4) Acceptor's Ledger.

(5) Bills Remitted Register (or Book).

(6) Overdue Bills.
This is also called Past Due Bills, Protested Bills, Returned Bills.

(7) Foreign Bills.

(*b*) Bills for Collection.
(8) Short Bills, Bills Lodged or Bills Deposited.

III. Loans Section.
(1) Loan Register.
(2) Loan Ledger.

IV. Securities Section.
Security Register.

V. Acceptances Section.
(1) Drafts Advised Register
(2) Acceptance Register.
(3) Acceptance Ledger.

VI. Transfer Credits Section.
(1) Drafts.
(2) Letters of Credit.
(3) Circular Notes.

VII. Current Accounts Section.
(1) Current Account Ledger or Customer's Ledger.
(2) Current Account Register, Check Ledger, or Sectional Cash Book.
(3) Pass Books.

VIII. Deposit Accounts Section.
(1) Deposit Receipt Register.
(2) Deposit Account Ledger.

IX. Head Office and Inter-Branch Accounts.
Daily State.

X. Profit and Loss Section.
Credit and Debit Accounts.

XI. Day Book, Journal, or General Cash Book.

XII. General Ledger.

XIII. Balance and Closing Entries.

XIV. Branch Returns.

FORM No. 56

SAFE DEPOSIT DEPARTMENT.

. Bank Ltd.

Conditions.

1. The Safe Deposit Vault will remain open from 9 A.M. to 6 P.M. on week days, 9 A.M. to 5 P.M. on Saturdays, 10 A.M. to 12 NOON on Bank Holidays except Sundays.
2. All rentals are payable strictly in advance and the Bank reserves the right of refusing access to the Locker in the event of the rental not being paid when due whether the same is demanded or not.
3. The Hirer shall have no right of property in the Locker but only an exclusive right of user thereof and access thereto during the period of this agreement and in accordance therewith. The Hirer shall not assign or sub-let the Locker, or any part of it, nor permit it to be used for any purpose other than for the deposit of documents, jewellery or other valuables nor shall the Hirer use the Locker for the deposit of any property of an explosive or destructive nature.
4. All property is received and held by the Safe Deposit Department of the Bank subject to a general lien for all monies due from the Hirer with power to sell such property or part thereof in satisfaction of monies due but not paid.
5. Either party may terminate the Agreement on giving to the other seven days' previous notice in writing prior to the date on which the agreed period of hiring terminates of such intention and the keys of the Locker shall in such case be delivered by the Hirer to the Bank at noon on the day of the termination of the hiring.
6. If no such notice as aforesaid shall have been given the hiring of the Locker shall be considered renewed after the date of determination but this condition is without prejudice to the rights of the Bank accrued in the meantime.
7. Without prejudice to any other remedies which the Bank may have against the Hirer all rights to the use of the Locker shall at the option of the Bank be forfeited upon non-payment of the rental whether the same shall be demanded or not, or upon breach of any of the conditions hereof by the Hirer and the Bank shall be at liberty to break open the Locker and either to forward (by Parcels Post or other reasonable means and at the Hirer's risk) the contents of the Locker to the Hirer at his registered address or may retain and keep the said contents in such other Locker or place as it may think fit, at a rental of double the amount of the rental hereby agreed to be charged.
8. If the key or keys of the Locker be lost by the Hirer, the Safe Deposit Department of the Bank should be notified without delay. All charges for opening the Locker. replacing the lost key or keys, and for changing the lock shall be payable by the Hirer.
9. All repairs required to be done to the Locker, lock or keys shall be done exclusively by workmen appointed by the Bank.
10. The Safe Deposit Department of the Bank should be notified of any change of address of the Hirer and any notice or communication sent by post to the registered address of the Hirer shall be considered to have been duly served.
11. For reasons of grave or urgent necessity the Bank reserves the right of closing the Safe Deposit Department for such period as it may consider necessary. The Bank also reserves the right of making changes in the opening and closing hours of the Department without any previous intimation.
12. Hirers are warned to keep the keys of their Lockers in a place of safety, not to divulge the number of their Lockers and their Pass words (if any given) and not to deliver their keys to any person other than their duly authorised agent.
13. It is hereby agreed that the relation of the Hirer and the Bank in this connection is that of a Licensor and Licensee and not that of a banker and customer.
14. The Hirer agrees to abide by such rules and regulations as the Safe Deposit Department of the Bank may from time to time adopt.

APPENDIX B

THE
NEGOTIABLE INSTRUMENTS ACT, 1881
(ACT No. XXVI OF 1881.)

An Act to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques.

[*9th December*, 1881]

[As modified up to the 31st December, 1941].

Preamble.—Whereas it is expedient to define and amend the law relating to promissory notes, bills of exchange and cheques; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. Short title, extent and commencement.—This Act may be called the Negotiable Instruments Act, 1881:

It extends to the whole of British India; but nothing herein contained affects the Indian Paper Currency Act, 1871, section 21, or affects any local usage relating to any instrument in an oriental language: Provided that such usages may be excluded by any words in the body of the instrument which indicate an intention that the legal relations of the parties thereto shall be governed by this Act; and it shall come into force on the first day of March, 1882.

For the Statement of Objects and Reasons, see Gazette of India, 1876, p. 1836; for the Reports of the Select Committee, see ibid., 1877, Pt. V, p. 321; 1878, Pt. V, p. 145; 1879, Pt. V, p. 75; 1881, Pt. V, p. 85; for discussions in Council, see ibid., 1876, Supplement, p. 1081, and ibid., 1881, Supplement, p. 1409. This Act has been declared in force in Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898), s. 4. (1) and Sch. I; and in British Baluchistan by s. 3 of the British Baluchistan Laws Regulation, 1913 (II of 1913). The Act was extended to and is in force in Berar, by the Berar Laws Act (IV of 1941).

For summary procedure on negotiable instruments, see the Code of Civil Procedure, 1908 (Act V of 1908), Sch. I. Order XXXVII.

As to the Indian Paper Currency Act, 1871, see now the Reserve Bank of India Act, 1934 (II of 1934).

2. [*Repeal of enactments*]. *Repealed by the Repealing and Amending Act,* 1891 (*VII of* 1891).

3. Meaning of "Banker" and "Notary public".—In this Act—

"banker" includes also persons or a corporation or company acting as bankers: and "notary public" includes also any person appointed by the [Central Government] to perform the functions of a notary public under this Act.

"Central Government" was substituted for "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937. "Local Government" had been substituted for the words "Governor General in Council" by s. 2 and Sch. Pt. I of the Decentralization Act, 1914 (IV of 1914).

CHAPTER II.

OF NOTES, BILLS AND CHEQUES.

4. **"Promissory note"**—A "promissory note" is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to or to the order of, a certain person, or to the bearer of the instrument.

Illustrations.

A signs instruments in the following terms:

(*a*) "I promise to pay B or order Rs. 500."

(*b*) "I acknowledge myself to be indebted to B in Rs. 1,000, to be paid on demand, for value received."

(*c*) "Mr. B, I. O. U. Rs. 1,000."

(*d*) "I promise to pay B Rs. 500 and all other sums which shall be due to him."

(*e*) "I promise to pay B Rs. 500, first deducting thereout any money which he may owe me."

(*f*) "I promise to pay B Rs. 500 seven days after my marriage with C."

(*g*) "I promise to pay B Rs. 500 on D's death, provided D leaves me enough to pay that sum."

(*h*) "I promise to pay B Rs. 500 and to deliver to him my black horse on 1st January next."

The instruments respectively marked (*a*) and (*b*) are promissory notes. The instruments respectively marked (*c*), (*d*), (*e*), (*f*), (*g*) and (*h*) are not promissory notes.

5. **"Bill of exchange"**—A "bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

A promise or order to pay is not "conditional," within the meaning of this section and section 4, by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event, which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

The sum payable may be "certain", within the meaning of this section and section 4, although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due.

The person to whom it is clear that direction is given or that payment is to be made may be a "certain person," within the meaning of this section and section 4, although he is mis-named or designated by description only.

6. **"Cheque".**—A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.

7. **"Drawer"; "Drawee"; "Acceptor"; "Acceptor for honour"; "Payee".**—The maker of a bill of exchange or cheque is called the "drawer", the person thereby directed to pay is called the "drawee."

When in the bill or in any indorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need, such person is called a "drawee in case of need."

After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same or given notice of such signing to the holder or to some person on his behalf, he is called the "acceptor."

[When a bill of exchange has been noted or protested for non-acceptance or for better security] and any person accepts it *supra protest* for honour of the drawer or of any one of the indorsers, such person is called an "acceptor for honour."

The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "payee."

The words in square brackets were substituted for the word "When acceptance is refused and the bill is protested for non-acceptance," by s. 2 of the Negotiable Instruments Act, 1885 (II of 1885).

8. **"Holder."**—The "holder" of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.

Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

9. **"Holder in due course."**—"Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer,

or the payee or indorsee thereof, if [payable to order], before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

The words in square brackets were substituted for the words "payable to, or to the order of, a payee," by s. 2 of the Negotiable Instruments (Amendment) Act, 1919 (VIII of 1919).

10. **"Payment in due course."**—"Payment in due course" means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

11. **"Inland instrument."**—A promissory note, bill of exchange or cheque, drawn or made in British India, and made payable in, or drawn upon any person resident in, British India, shall be deemed to be an inland instrument.

12. **"Foreign instrument."**—Any such instrument not so drawn, made or made payable shall be deemed to be a foreign instrument.

13. **"Negotiable instrument."**—[(1) A "negotiable instrument" means a promissory note, bill of exchange or cheque payable either to order or to bearer.

Explanation (i).—A promissory note, bill of exchange or cheque is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable.

Explanation (ii).—A promissory note, bill of exchange or cheque is payable to bearer which is expressed to be so payable or on which the only or last indorsement is an indorsement in blank.

Explanation (iii).—Where a promissory note, bill of exchange or cheque, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.]

[(2) A negotiable instrument may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees.]

Sub-section (1) was substituted by s. 3 of the Negotiable Instruments (Amendment) Act, 1919 (VIII of 1919). Sub-section (2) was added by s. 2 of the Negotiable Instruments (Amendment) Act, 1914 (V of 1914).

14. **Negotiation.**—When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated.

15. **Indorsement.**—When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the "indorser."

16. **Indorsement "in blank", and "in full", etc.**—[(*1*) If the indorser signs his name only, the indorsement is said to be "in blank", and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the indorsement is said to be "in full"; and the person so specified is called the "indorsee" of the instrument.]

[(2) The provisions of this Act relating to a payee shall apply with the necessary modifications to an indorsee.]

The figure and brackets "(1)" were inserted and sub-section (2) added by s. 3 of the Negotiable Instruments (Amendment) Act, 1914 (V of 1914).

17. **Ambiguous instruments.**—Where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly.

18. **Where amount stated differently in figures and words.**—If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid.

19. Instruments payable on demand.—A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are payable on demand.

20. Inchoate stamped instruments.—Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in British India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives *prima facie* authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder, in due course for such amount: Provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.

21. "At sight," "on presentment," "after sight."—In a promissory note or bill of exchange the expressions "at sight" and "on presentment" mean on demand. The expression "after sight" means, in a promissory note, after presentment for sight, and, in a bill of exchange, after acceptance, or noting for non-acceptance, or protest for non-acceptance.

22. Maturity and days of grace.—The maturity of a promissory note or bill of exchange is the date at which it falls due.

Every promissory note or bill of exchange which is not expressed to be payable on demand, at sight or on presentment is at maturity on the third day after the day on which it is expressed to be payable.

23. Maturity of bill or note, payable so many months after date or sight.—In calculating the date at which a promissory note or bill of exchange, made payable a stated number of months after date or after sight, or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month which corresponds with the day on which the instrument is dated, or presented for acceptance or sight, or noted for non-acceptance, or protested for non acceptance, or the event happens, or where the instrument is a bill of exchange made payable a stated number of months after sight and has been accepted for honour, with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.

Illustrations.

(*a*) A negotiable instrument, dated 29th January, 1878, is made payable at one month after date. The instrument is at maturity on the third day after the 28th February, 1878.

(*b*) A negotiable instrument, dated 30th August, 1878, is made payable three months after date The instrument is at maturity on the 3rd December, 1878

(*c*) A promissory note or bill of exchange, dated 31st August, 1878, is made payable three months after date. The instrument is at maturity on the 3rd December, 1878.

24. Maturity of bill or note, payable so many days after date or sight.—In calculating the date at which a promissory note or bill of exchange made payable a certain number of days after date or after sight or after a certain event is at maturity, the day of the date, or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, shall be excluded.

25. When day of maturity is a holiday.—When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day.

* *Explanation* —The expression "public holiday" includes Sundays, New Year's day, Christmas day: if either of such days falls on a Sunday, the next following Monday: Good Friday.; and any other day declared by the Central Government, by notification in the official Gazette, to be a public holiday.

* The power under this Explanation has been delegated to the Commissioner in Sind by the Government of Bombay under s. 2 of Act V of 1868, see Bombay Gazette, 1903, Part I, p. 419.

CHAPTER III.

PARTIES TO NOTES, BILLS AND CHEQUES.

26. Capacity of parties.—Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, indorsement, delivery and negotiation of a promissory note, bill of exchange or cheque.

A minor may draw, indorse, deliver and negotiate such instrument so as to bind all parties except himself.

Nothing herein contained shall be deemed to empower a corporation to make, indorse or accept such instruments except in cases in which, under the law for the time being in force, they are so empowered.

27. Agency.—Every person capable of binding himself or of being bound, as mentioned in section 26, may so bind himself or be bound by a duly authorized agent acting in his name.

A general authority to transact business and to receive and discharge debts does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind his principal.

An authority to draw bills of exchange does not of itself import an authority to indorse.

28. Liability of agent signing.—An agent who signs his name to a promissory note, bill of exchange or cheque without indicating thereon that he signs as agent, or that he does not intend thereby to incur personal responsibility, is liable personally on the instrument, except to those who induced him to sign upon the belief that the principal only would be held liable.

29. Liability of legal representative signing.—A legal representative of a deceased person who signs his name to a promissory note, bill of exchange or cheque is liable personally thereon unless he expressly limits his liability to the extent of the assets received by him as such.

30. Liability of drawer.—The drawer of a bill of exchange or cheque is bound, in case of dishonour by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

31. Liability of drawee of cheque.—The drawee of a cheque having sufficient funds of the drawer in his hands, properly applicable to the payment of such cheque must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default.

32. Liability of maker of note and acceptor of bill.—In the absence of a contract to the contrary, the maker of a promissory note and the acceptor before maturity of a bill of exchange are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand.

In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him and caused by such default.

33. Only drawee can be acceptor except in need or for honour.—No person except the drawee of a bill of exchange, or all or some of several drawees, or a person named therein as a drawee in case of need, or an acceptor for honour, can bind himself by an acceptance.

34. Acceptance by several drawees not partners.—Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority.

35. Liability of indorser.—In the absence of a contract to the contrary, whoever indorses and delivers a negotiable instrument before maturity, without, in such indorsement, expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder, in case of dishonour by the drawee, acceptor or maker to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of dishonour has been given to, or received by, such indorser as hereinafter provided.

Every indorser after dishonour is liable as upon an instrument payable on demand.

36. Liability of prior parties to holder in due course.—Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.

37. Maker, drawer and acceptor principals.—The maker of a promissory note, or cheque, the drawer of a bill of exchange until acceptance, and the acceptor are, in the

absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer or acceptor, as the case may be.

38. Prior party as principals in respect of subsequent parties.—As between the parties so liable as sureties, each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party.

Illustration.

A draws a bill payable to his own order on B, who accepts. A afterwards indorses the bill to C, C to D, and D to E. As between E and B, B is the principal debtor, and A, C and D are his sureties. As between E and A, A is the principal debtor, and C and D are his sureties. As between E and C, C is the principal debtor and D is his surety.

39. Suretyship.—When the holder of an accepted bill of exchange enters into any contract with the acceptor which, under section 134 or 135 of the Indian Contract Act, 1872, would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged.

40. Discharge of indorser's liability.—When the holder of a negotiable instrument, without the consent of the indorser, destroys or impairs the indorser's remedy against a prior party, the indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.

Illustration.

A is the holder of a bill of exchange made payable to the order of B, which contains the following indorsements in blank :—

First indorsement, " B "
Second indorsement, " Peter Williams."
Third indorsement," Wright & Co."
Fourth indorsement, " John Rozario."

This bill A puts in suit against John Rozario and strikes out, without John Rozario's consent, the indorsements by Peter Williams and Wright & Co. A is not entitled to recover anything from John Rozario.

41. Acceptor bound although indorsement forged.—An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged, if he knew or had reason to believe the indorsement to be forged when he accepted the bill.

42. Acceptance of bill drawn in fictitious name.—An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.

43. Negotiable instrument made, etc., without consideration.—A negotiable instrument made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without indorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

Exception I.—No party for whose accommodation a negotiable instrument has been made, drawn, accepted or indorsed can, if he has paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

Exception II.—No party to the instrument who has induced any other party to make, draw, accept, indorse or transfer the same to him for a consideration which he has failed to pay or perform in full shall recover thereon an amount exceeding the value of the consideration (if any) which he has actually paid or performed.

44. Partial absence or failure of money-consideration.—When the consideration for which a person signed a promissory note, bill of exchange or cheque consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionately reduced.

Explanation.—The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange or cheque stands in immediate relation with the payee and the indorser with his indorsee. Other signers may by agreement stand in immediate relation with a holder.

Illustration.

A draws a bill on B for Rs. 500 payable to the order of A. B accepts the bill, but subsequently dishonours it by non-payment. A sues B on the bill. B proves that it was accepted for value as to Rs. 400, and as an accommodation to the plaintiff as to the residue. A can only recover Rs. 400.

45. Partial failure of consideration not consisting of money.—Where a part of the consideration for which a person signed a promissory note, bill of exchange or cheque, though not consisting of money, is ascertainable in money without collateral enquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

[**45-A. Holder's right to duplicate of lost bill.**—Where a bill of exchange has been lost before it is over-due the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so.]

This section was inserted by s. 3 of the Negotiable Instruments Act, 1885 (II of 1885).

CHAPTER IV.

OF NEGOTIATION.

46. **Delivery.**—The making, acceptance or indorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive.

As between parties standing in immediate relation delivery to be effectual must be made by the party making, accepting or indorsing the instrument, or by a person authorised by him in that behalf.

As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof.

A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof.

47. Negotiation by delivery.—Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.

Exception.—A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.

Illustrations.

(*a*) A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.

(*b*) A, the holder of a negotiable instrument payable to bearer, which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possesses the instrument as B's agent. The instrument has been negotiated, and B has become the holder of it.

48. Negotiation by indorsement.—Subject to the provisions of section 58, a promissory note, bill of exchange or cheque [payable to order], is negotiable by the holder by indorsement and delivery thereof.

The words in square brackets were substituted for the words "payable to the order of a specified person or to a specified person or order," by s. 4 of the Negotiable Instruments (Amendment) Act, 1919 (VIII of 1919).

49. Conversion of indorsement in blank into indorsement in full.—The holder of a negotiable instrument indorsed in blank may, without signing his own name, by writing above the indorser's signature a direction to pay to any other person as indorsee, convert the indorsement in blank into an indorsement in full; and the holder does not thereby incur the responsibility of an indorser.

50. Effect of indorsement.—The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation; but the indorsement may, by express words, restrict or exclude such right, or may merely constitute the indorsee an agent to indorse the instrument, or to receive its contents for the indorser or for some other specified person.

Illustrations.

B signs the following indorsements on different negotiable instruments payable to bearer:—

(*a*) "Pay the contents to C only."

(*b*) "Pay C for my use."

(*c*) "Pay C or order for the account of B."

(*d*) "The within must be credited to C."

These indorsements exclude the right of further negotiation by C.

(*e*) "Pay C."

(*f*) "Pay C value in account with the Oriental Bank."

(*g*) "Pay the contents to C, being part of the consideration in a certain deed of assignment executed by C to the indorser and others."

These indorsements do not exclude the right of further negotiation by C.

51. Who may negotiate.—Every sole maker, drawer, payee or indorsee, or all of several joint makers, drawers, payees or indorsees, of a negotiable instrument may, if the negotiability of such instrument has not been restricted or excluded as mentioned in section 50, indorse and negotiate the same.

Explanation.—Nothing in this section enables a maker or drawer to indorse or negotiate an instrument, unless he is in lawful possession or is holder thereof; or enables a payee or indorsee to indorse or negotiate an instrument, unless he is holder thereof.

Illustration.

A bill is drawn payable to A or order. A indorses it to B, the indorsement not containing the words "or order" or any equivalent words. B may negotiate the instrument.

52. Indorser who excludes his own liability or makes it conditional.—The indorser of a negotiable instrument may, by express words in the indorsement, exclude his own liability thereon, or make such liability or the right of the indorsee to receive the amount due thereon depend upon the happening of a specified event, although such event may never happen.

Where an indorser so excludes his liability and afterwards becomes the holder of the instrument, all intermediate indorsers are liable to him.

Illustrations.

(*a*) The indorser of a negotiable instrument signs his name adding the words—"Without recourse."

Upon this indorsement he incurs no liability.

(*b*) A is the payee and holder of a negotiable instrument. Excluding personal liability by an indorsement "without recourse," he transfers the instrument to B, and B indorses it to C, who indorses it to A. A is not only reinstated in his former rights, but has the rights of an indorsee against B and C.

53. Holder deriving title from holder in due course.—A holder of a negotiable instrument who derives title from a holder in due course has the rights thereon of that holder in due course.

54. Instrument indorsed in blank.—Subject to the provisions hereinafter contained as to crossed cheques, a negotiable instrument indorsed in blank is payable to the bearer thereof even although originally payable to order.

55. Conversion of indorsement in blank into indorsement in full.—If a negotiable instrument after having been indorsed in blank is indorsed in full, the amount of it cannot be claimed from the indorser in full, except by the person to whom it has been indorsed in full, or by one who derives title through such person.

56. Indorsement for part to sum due.—No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument; but, where such amount has been partly paid, a note to that effect may be indorsed on the instrument, which may then be negotiated for the balance.

57. Negotiation by legal personal representative of deceased person.—The legal representative of a deceased person cannot negotiate by delivery only a promissory note, bill of exchange or cheque payable to order and indorsed by the deceased but not delivered.

58. Instrument unlawfully obtained.—When a negotiable instrument has been lost or has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or indorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party prior to such holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course.

59. Instrument acquired after dishonour or when overdue.—The holder of a negotiable instrument, who has acquired it after dishonour, whether by non-acceptance or non-payment, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor:

Provided that any person who, in good faith and for consideration, becomes the holder, after maturity, of a promissory note or bill of exchange made, drawn or accepted without consideration, for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the note or bill from any prior party.

Illustration.

The acceptor of a bill of exchange, when he accepted it, deposited with the drawer certain goods as a collateral security for the payment of the bill, with power to the drawer to sell the goods and apply the proceeds in discharge of the bill if it were not paid at maturity. The bill not having been paid at maturity, the drawer sold the goods and retained the proceeds but indorsed the bill to A. A's title is subject to the same objection as the drawer's title.

60. Negotiability until payment or satisfaction.—A negotiable instrument may be negotiated (except by the maker, drawee or acceptor after maturity) until payment or satisfaction thereof by the maker, drawee or acceptor at or after maturity, but not after such payment or satisfaction.

CHAPTER V.

Of Presentment.

61. Presentment for acceptance.—A bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can, after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

If the drawee cannot, after reasonable search, be found, the bill is dishonoured.

If the bill is directed to the drawee at a particular place, it must be presented at that place; and, if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured.

[Where authorised by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.]

The paragraph in square brackets was added by s. 4 of the Negotiable Instruments Act, 1885 (II of 1885).

62. Presentment of promissory note for sight.—A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can, after reasonable search, be found) by a person entitled to demand payment, within a reasonable time after it is made and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

63. Drawee's time for deliberation.—The holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee [forty-eight] hours (exclusive of public holidays) to consider whether he will accept it.

The word in square brackets was substituted for the word "twenty-four" by s. 2 of the Negotiable Instruments (Amendment) Act, 1921 (XII of 1921).

64. Presentment for payment.—Promissory notes, bills of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder.

[Where authorised by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.]

Exception.—Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

The paragraph in square brackets was added by s. 4 of the Negotiable Instruments Act, 1885 (II of 1885).

65. Hours for presentment.—Presentment for payment, must be made during the usual hours of business, and, if at a banker's, within banking hours.

66. Presentment for payment of instrument payable after date or sight.—A promissory note or bill of exchange made payable at a specified period after date or sight thereof, must be presented for payment at maturity.

67. Presentment for payment of promissory note payable by instalments.—A promissory note payable by instalments must be presented for payment on the third day after the date fixed for payment of each instalment; and non-payment on such presentment has the same effect as non-payment of a note at maturity.

68. Presentment for payment of instrument payable at specified place and not elsewhere.—A promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place and not elsewhere must, in order to charge any party thereto, be presented for payment at that place.

69. Instrument payable at specified place.—A promissory note or bill of exchange, made, drawn or accepted payable at a specified place must, in order to charge the maker or drawer thereof, be presented for payment at that place.

70. Presentment where no place specified.—A promissory note or bill of exchange not made payable as mentioned in sections 68 and 69, must be presented for payment at the place of business (if any), or at the usual residence, of the maker, drawee or acceptor thereof, as the case may be.

71. Presentment when maker, etc., has no known place of business or residence.—If the maker, drawee or acceptor of a negotiable instrument has no known place of business or fixed residence, and no place is specified in the instrument for presentment for acceptance or payment, such presentment may be made to him in person wherever he can be found.

72. Presentment of cheque to charge drawer.—[Subject to the provisions of section 84], a cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

The words and figures in square brackets were inserted by s. 2 of the Negotiable Instruments (Amendment) Act, 1897 (VI of 1897).

73. Presentment of cheque to charge any other person.—A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person.

74. Presentment of instrument payable on demand.—Subject to the provisions of section 31, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

75. Presentment by or to agent, representative of deceased or assignee of insolvent.—Presentment for acceptance or payment may be made to the duly authorized agent of the drawee, maker or acceptor, as the case may be, or, where the drawee, maker or acceptor has died, to his legal representative, or, where he has been declared an insolvent, to his assignee.

[**75-A. Excuse for delay in presentment for acceptance or payment.**—Delay in presentment [for acceptance or payment] is excused if the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made within a reasonable time].

This section was inserted by s. 2 of the Negotiable Instruments (Amendment) Act, 1920 (XXV of 1920). The words in square brackets were substituted for the words "for payment" by s. 3 of the Negotiable Instruments (Amendment) Act, 1921 (XII of 1921).

76. When presentment unnecessary.—No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment, in any of the following cases:—

(*a*) if the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or,

if the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or,

if the instrument being payable at some other specified place, neither he nor any person authorized to pay it attends at such place during the usual business hours, or,

if the instrument not being payable at any specified place, he cannot after due search be found;

(*b*) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment;

(*c*) as against any party if, after maturity, with knowledge that the instrument has not been presented—

he makes a part payment on account of the amount due on the instrument,

or promises to pay the amount due thereon in whole or in part,

or otherwise waives his right to take advantage of any default in presentment for payment;

(*d*) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

77. Liability of banker for negligently dealing with bill presented for payment.—When a bill of exchange accepted payable at a specified bank, has been duly presented there for payment and dishonoured, if the banker so negligently or improperly keeps, deals with or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.

CHAPTER VI.

Of Payment and Interest.

78. To whom payment should be made.—Subject to the provisions of section 82, clause (*c*), payment of the amount due on a promissory note, bill of exchange or cheque must in order to discharge the maker or acceptor, be made to the holder of the instrument.

79. Interest when rate specified.—When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified, on the amount of the principal money due thereon, from the date of the

instrument, until tender or realization of such amount, or until such date after the institution of a suit to recover such amount as the Court directs.

80. Interest when no rate specified.—When no rate of interest is specified in the instrument, interest on the amount due thereon shall, [notwithstanding any agreement relating to interest between any parties to the instrument], be calculated at the rate of six per centum per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the court directs.

Explanation.—When the party charged is the indorser of an instrument dishonoured by non-payment he is liable to pay interest only from the time that he receives notice of the dishonour.

The words in square brackets were substituted for the words and figures "except in cases provided for by the Code of Civil Procedure, section 532" by s. 2 of the Negotiable Instruments (Interest) Act, 1926 (XXX of 1926).

81. Delivery of instrument on payment, or indemnity in case of loss.—Any person liable to pay, and called upon by the holder thereof to pay the amount due on a promissory note, bill of exchange or cheque is before payment entitled to have it shown, and is on payment entitled to have it delivered up, to him, or if the instrument is lost or cannot be produced, to be indemnified against any further claim thereon against him.

CHAPTER VII

Of Discharge from Liability on Notes, Bills and Cheques.

82. Discharge by cancellation, release, or payment.– The maker, acceptor or indorser respectively of a negotiable instrument is discharged from liability thereon—

(*a*) to a holder thereof who cancels such acceptor's or indorser's name with intent to discharge him, and to all parties claiming under such holder ;

(*b*) to a holder thereof who otherwise discharges such maker, acceptor or indorser, and to all parties deriving title under such holder after notice of such discharge ;

(*c*) to all parties thereto, if the instrument is payable to bearer or has been indorsed in blank, and such maker, acceptor or indorser makes payment in due course of the amount due thereon.

83. Discharge by allowing drawee more than forty-eight hours to accept.—If the holder of a bill of exchange allows the drawee more than [forty-eight] hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.

The words in square brackets were substituted for the words "twenty-four" by s. 2 of the Negotiable Instruments (Amendment) Act, 1921 (XII of 1921).

84. When cheque not duly presented and drawer damaged thereby.—[(1) When a cheque is not presented for payment within a reasonable time of its issue, and the drawer or person on whose account it is drawn had the right, at the time when presentment ought to have been made, as between himself and the banker, to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of the banker to a larger amount than he would have been if such cheque had been paid.

(2) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.

(3) The holder of the cheque as to which such drawer or person is so discharged shall be a creditor, in lieu of such drawer or person, of such banker, to the extent of such discharge and entitled to recover the amount from him.]

Illustrations.

(*a*) A draws a cheque for Rs. 1,000, and, when the cheque ought to be presented, has funds at the bank to meet it. The bank fails before the cheque is presented. The drawer is discharged, but the holder can prove against the bank for the amount of the cheque.

(*b*) A draws a cheque at Umballa on a bank in Calcutta. The bank fails before the cheque could be presented in ordinary course. A is not discharged, for he has not suffered actual damage through any delay in presenting the cheque.

This section was substituted by s. 3 of the Negotiable Instruments Act Amendment Act, 1897 (VI of 1897).

85. **Cheque payable to order.**—[(1) Where a cheque payable to order purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course.]

[(2) Where a cheque is originally expressed to be payable to bearer, the drawee is discharged by payment in due course to the bearer thereof, notwithstanding any endorsement whether in full or in blank appearing thereon, and notwithstanding that any such endorsement purports to restrict or exclude further negotiation.]

This section was re-numbered and sub-section (2) was added by s. 2 of the Negotiable Instruments (Amendment) Act, 1934 (XVII of 1934).

[85-A. **Drafts drawn by one branch of a bank on another payable to order.**—Where any draft, that is, an order to pay money, drawn by one office of a bank upon another office of the same bank for a sum of money payable to order on demand, purports to be endorsed by or on behalf of the payee, the bank is discharged by payment in due course.]

This section was inserted by s. 2 of the Negotiable Instruments (Amendment) Act 1930 (XXV of 1930).

86. **Parties not consenting discharged by qualified or limited acceptance.**—If the holder of a bill of exchange acquiesces in a qualified acceptance, or one limited to part of the sum mentioned in the bill, or which substitutes a different place or time for payment, or which, where the drawees are not partners, is not signed by all the drawees, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him, unless on notice given by the holder they assent to such acceptance.

Explanation.—An acceptance is qualified—

(*a*) where it is conditional, declaring the payment to be dependent on the happening of an event therein stated;

(*b*) where it undertakes the payment of part only of the sum ordered to be paid;

(*c*) where, no place of payment being specified on the order, it undertakes the payment at a specified place, and not otherwise or elsewhere; or where, a place of payment being specified in the order, it undertakes the payment at some other place and not otherwise or elsewhere;

(*d*) where it undertakes the payment at a time other than that at which under the order it would be legally due.

87. **Effect of material alteration.**—Any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties;

and any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

The provisions of this section are subject to those of sections 20, 49, 86 and 125.

88. **Acceptor or indorser bound notwithstanding previous alteration.**—An acceptor or indorser of a negotiable instrument is bound by his acceptance or indorsement notwithstanding any previous alteration of the instrument.

89. **Payment of instrument on which alteration is not apparent.**—Where a promissory note, bill of exchange or cheque has been materially altered but does not appear to have been so altered,

or where a cheque is presented for payment which does not at the time of presentation appear to be crossed or to have had a crossing which has been obliterated,

payment thereof by a person or banker liable to pay, and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall

discharge such person or banker from all liability thereon; and such payment shall not be questioned by reason of the instrument having been altered or the cheque crossed.

90. Extinguishment of rights of action on bill in acceptor's hands.—If a bill of exchange which has been negotiated is, at or after maturity, held by the acceptor in his own right, all rights of action thereon are extinguished.

CHAPTER VIII.

OF NOTICE OF DISHONOUR.

91. Dishonour by non-acceptance.—A bill of exchange is said to be dishonoured by non-acceptance when the drawee, or one of several drawees not being partners, makes default in acceptance upon being duly required to accept the bill, or where presentment is excused and the bill is not accepted.

Where the drawee is incompetent to contract, or the acceptance is qualified the bill may be treated as dishonoured.

92. Dishonour by non-payment.—A promissory note, bill of exchange or cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same.

93. By and to whom notice should be given.—When a promissory note, bill of exchange or cheque is dishonoured by non-acceptance or non-payment, the holder thereof, or some party thereto who remains liable thereon, must give notice that the instrument has been so dishonoured to all other parties whom the holder seeks to make severally liable thereon, and to some one of several parties whom he seeks to make jointly liable thereon.

Nothing in this section renders it necessary to give notice to the maker of the dishonoured promissory note or the drawee or acceptor of the dishonoured bill of exchange or cheque.

94. Mode in which notice may be given.—Notice of dishonour may be given to a duly authorised agent of the person to whom it is required to be given, or, where he has died, to his legal representative, or, where he has been declared an insolvent, to his assignee; may be oral or written, may, if written, be sent by post and may be in any form; but it must inform the party to whom it is given, either in express terms or by reasonable intendment, that the instrument has been dishonoured, and in what way, and that he will be held liable thereon; and it must be given within a reasonable time after dishonour, at the place of business or (in case such party has no place of business) at the residence of the party for whom it is intended.

If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid.

95. Party receiving must transmit notice of dishonour.—Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to such party within a reasonable time, unless such party otherwise receives due notice as provided by section 93.

96. Agent for presentment.—When the instrument is deposited with an agent for presentment, the agent is entitled to the same time to give notice to his principal as if he were the holder giving notice of dishonour, and the principal is entitled to a further like period to give notice of dishonour.

97. When party to whom notice given is dead.—When the party to whom notice of dishonour is despatched is dead, but the party despatching the notice is ignorant of his death, the notice is sufficient.

98. When notice of dishonour is unnecessary.—No notice of dishonour is necessary—

(a) when it is dispensed with by the party entitled thereto;

(b) in order to charge the drawer when he has countermanded payment;

(*c*) when the party charged could not suffer damage for want of notice;

(*d*) when the party entitled to notice cannot after due search be found; or the party bound to give notice is, for any other reason, unable without any fault of his own to give it;

(*e*) to charge the drawers when the acceptor is also a drawer;

(*f*) in the case of a promissory note which is not negotiable;

(*g*) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

CHAPTER IX.

OF NOTING AND PROTEST.

99. Noting.—When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each.

Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason, if any, assigned for such dishonour, or, if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges.

100. Protest.—When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest.

When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor and on its being refused may, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

101. Contents of protest.—A protest under section 100 must contain—

(*a*) either the instrument itself, or a literal transcript of the instrument and of everything written or printed thereupon;

(*b*) the name of the person for whom and against whom the instrument has been protested;

(*c*) a statement that payment or acceptance, or better security, as the case may be, has been demanded of such person by the notary public; the terms of his answer, if any, or a statement that he gave no answer, or that he could not be found;

(*d*) when the note or bill has been dishonoured, the place and time of dishonour, and, when better security has been refused, the place and time of refusal;

(*e*) the subscription of the notary public making the protest;

(*f*) in the event of an acceptance for honour or of a payment for honour, the name of the person by whom, of the person for whom, and the manner in which, such acceptance or payment was offered and effected.

[A notary public may make the demand mentioned in clause (*c*) of this section either in person or by his clerk or, where authorized by agreement or usage, by registered letter].

The paragraph in square brackets was added by s. 5 of the Negotiable Instruments Act, 1885 (II of 1885).

102. Notice of protest.—When a promissory note or bill of exchange is required by law to be protested, notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions; but the notice may be given by the notary public who makes the protest.

103. Protest for non-payment after dishonour by non-acceptance.—All bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee and which are dishonoured by non-acceptance may, without further presentment to the drawee, be protested for non-payment in the place specified for payment unless paid before or at maturity.

104. Protest of foreign bills.—Foreign bills of exchange must be protested for dishonour when such protest is required by the law of the place where they are drawn.

[**104-A. When noting equivalent to protest.**—For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting].

This section was inserted by s. 6 of the Negotiable Instruments Act, 1885 (II of 1885).

CHAPTER X.

OF REASONABLE TIME.

105. Reasonable time.—In determining what is a reasonable time for presentment for acceptance or payment, for giving notice of dishonour and for noting, regard shall be had to the nature of the instrument and the usual course of dealing with respect to similar instruments; and, in calculating such time, public holidays shall be excluded.

106. Reasonable time of giving notice of dishonour.—If the holder and the party to whom notice of dishonour is given carry on business or live (as the case may be) in different places, such notice is given within a reasonable time if it is dispatched by the next post or on the day next after the day of dishonour.

If the said parties carry on business or live in the same place, such notice is given within a reasonable time if it is despatched in time to reach its destination on the day next after the day of dishonour.

107. Reasonable time for transmitting such notice.—A party receiving notice of dishonour who seeks to enforce his right against a prior party transmits the notice within a reasonable time if he transmits it within the same time after its receipt as he would have had to give notice if he had been the holder.

CHAPTER XI.

OF ACCEPTANCE AND PAYMENT FOR HONOUR AND REFERENCE IN CASE OF NEED.

108. Acceptance for honour.—When a bill of exchange has been noted or protested for non-acceptance or for better security, any person not being a party already liable thereon may, with the consent of the holder, by writing on the bill, accept the same for the honour of any party thereto * * *

The last portion of the section was repealed by s. 7 of the Negotiable Instruments Act, 1885 (II of 1885).

109. How acceptance for honour must be made.—A person desiring to accept for honour must, [by writing on the bill under his hand] declare that he accepts under protest the protested bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour. * * *

The words in square brackets were substituted for the words "in the presence of a notary public subscribe the bill with his own hand and" by s. 8 of the Negotiable Instruments Act, 1885 (II of 1885) and the words "and such declaration must be recorded by the notary in his register" were repealed, ibid.

110. Acceptance not specifying for whose honour it is made.—Where the acceptance does not express for whose honour it is made, it shall be deemed to be made for the honour of the drawer.

111. Liability of acceptor for honour.—An acceptor for honour binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill if the drawee do not: and such party and all prior parties are liable in their respective capacities to compensate the acceptor for honour for all loss or damage sustained by him in consequence of such acceptance.

But an acceptor for honour is not liable to the holder of the bill unless it is presented (or in case the address given by such acceptor on the bill is a place other than the place where the bill is made payable, forwarded for presentment, not later than the day next after the day of its maturity.

112. When acceptor for honour may be charged.—An acceptor for honour cannot be charged unless the bill has at its maturity been presented to the drawee for payment, and has been dishonoured by him, and noted or protested for such dishonour.

113. Payment for honour.—When a bill of exchange has been noted or protested for non-payment, any person may pay the same for the honour of any party liable to pay the same, provided that the person so paying [or his agent in that behalf] has previously declared before a notary public the party for whose honour he pays, and that such declaration has been recorded by such notary public.

The words in square brackets were inserted by s. 9 of the Negotiable Instruments Act, 1885 (II of 1885).

114. Right of payer for honour.—Any person so paying is entitled to all the rights, in respect of the bill, of the holder at the time of such payment, and may recover from the party for whose honour he pays all sums so paid, with interest thereon and with all expenses properly incurred in making such payment.

115. Drawee in case of need.—Where a drawee in case of need is named in a bill of exchange, or in any indorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.

116. Acceptance and payment without protest.—A drawee in case of need may accept and pay the bill of exchange without previous protest.

CHAPTER XII.

Of Compensation.

117. Rules as to compensation.—The compensation payable in case of dishonour of a promissory note, bill of exchange or cheque, by any party liable to the holder or any indorsee, shall * * * * be determined by the following rules:—

(*a*) the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it;

(*b*) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places;

(*c*) an indorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at six per centum per annum from the date of payment until tender or realization thereof, together with all expenses caused by the dishonour and payment;

(*d*) when the person charged and such indorser reside at different places, the indorser is entitled to receive such sum at the current rate of exchange between the two places;

(*e*) the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof (if any). If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

The words, figures and brackets "(except in cases provided for by the Code of Civil Procedure, section 532)" e omitted by s. 3 of the Negotiable Instruments (Interest) Act, 1926 (XXX of 1926).

CHAPTER XIII.

SPECIAL RULES OF EVIDENCE.

118. Presumptions as to negotiable instruments.—Until the contrary is proved, the following presumptions shall be made :—

(*a*) that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration ;

(*b*) that every negotiable instrument bearing a date was made or drawn on such date ;

(*c*) that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity ;

(*d*) that every transfer of a negotiable instrument was made before its maturity ;

(*e*) that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon ;

(*f*) that a lost promissory note, bill of exchange or cheque was duly stamped ;

(*g*) that the holder of a negotiable instrument is a holder in due course : Provided that where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burthen of proving that the holder is a holder in due course lies upon him.

119. Presumption on proof of protest.—In a suit upon an instrument which has been dishonoured, the Court shall, on proof of the protest, presume the fact of dishonour, unless and until such fact is disproved.

120. Estoppel against denying original validity of instrument.—No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honour of the drawer, shall, in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn.

121. Estoppel against denying capacity of payee to indorse.—No maker of a promissory note and no acceptor of a bill of exchange [payable to order] shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the date of the note or bill, to indorse the same.

The words in square brackets were substituted for the words "payable to, or to the order of, a specified person" by s. 5 of the Negotiable Instruments (Amendment) Act, 1919 (VIII of 1919).

122. Estoppel against denying signature of capacity of prior party.—No indorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument.

CHAPTER XIV.

OF CROSSED CHEQUES.

123. Cheque crossed generally.—Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words "not negotiable", that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

124. Cheque crossed specially.—Where a cheque bears across its face, an addition of the name of a banker, either with or without the words "not negotiable", that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

125. Crossing after issue.—Where a cheque is uncrossed, the holder may cross it generally or specially.

Where a cheque is crossed generally, the holder may cross it specially.

Where a cheque is crossed generally or specially, the holder may add the words " not negotiable."

Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

126. Payment of crossed cheque.—Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection.

127. Payment of cheque crossed specially more than once.—Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.

128. Payment in due course of crossed cheque.—Where the banker on whom a crossed cheque is drawn has paid the same in due course, the banker paying the cheque, and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to and placed in, if the amount of the cheque had been paid to and received by the true owner thereof.

129. Payment of crossed cheque out of due course.—Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

130. Cheque bearing " not negotiable."—A person taking a cheque crossed generally or specially, bearing in either case the words " not negotiable," shall not have, and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had.

131. Non-liability of banker receiving payment of cheque.—A banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective incur any liability to the true owner of the cheque by reason only of having received such payment.

[*Explanation* —A banker receives payment of a crossed cheque for a customer within the meaning of this section notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof].

The Explanation was added by s. 2 of the Negotiable Instruments (Amendment) Act, 1922 (XVIII of 1922).

CHAPTER XV.

Of Bills in Sets.

132. Set of bills.—Bills of exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue payable only so long as the others remain unpaid. All the parts together make a set; but the whole set constitutes only one bill, and is extinguished when one of the parts, if a separate bill, would be extinguished.

Exception.—When a person accepts or indorses different parts of the bill in favour of different persons, he and the subsequent indorsers of each part are liable on such part as if it were a separate bill.

133. Holder of first acquired part entitled to all.—As between holders in due course of different parts of the same set he who first acquired title to his part is entitled to the other parts and the money represented by the bill.

CHAPTER XVI.

OF INTERNATIONAL LAW.

134. Law governing liability of maker, acceptor or indorser of foreign instrument.—In the absence of a contract to the contrary, the liability of the maker or drawer of a foreign promissory note, bill of exchange or cheque is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable.

Illustration.

A bill of exchange was drawn by A in California, where the rate of interest is 25 per cent., and accepted by B, payable in Washington, where the rate of interest is 6 per cent. The bill is indorsed in British India, and is dishonoured. An action on the bill is brought against B in British India. He is liable to pay interest at the rate of 6 per cent. only; but, if A is charged as drawer, A is liable to pay interest at the rate of 25 per cent.

135. Law of place of payment governs dishonour.—Where a promissory note, bill of exchange or cheque is made payable in a different place from that in which it is made or indorsed, the law of the place where it is made payable determines what constitutes dishonour and what notice of dishonour is sufficient.

Illustration.

A bill of exchange drawn and indorsed in British India, but accepted payable in France, is dishonoured. The indorsee causes it to be protested for such dishonour, and gives notice thereof in accordance with the law of France, though not in accordance with the rules herein contained in respect of bills which are not foreign. The notice is sufficient.

136. Instrument made, etc., out of British India but in accordance with its law.—If a negotiable instrument is made, drawn, accepted or indorsed out of British India, but in accordance with the law of British India, the circumstance that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into does not invalidate any subsequent acceptance or indorsement made thereon in British India.

137. Presumption as to foreign law.—The law of any foreign country regarding promissory notes, bills of exchange and cheques shall be presumed to be the same as that of British India, unless and until the contrary is proved.

CHAPTER XVII.

NOTARIES PUBLIC.

This Chapter was inserted by s. 10 of the Negotiable Instruments Act, 1885 (II of 1885).

138. Power to appoint notaries public.—The [Central Government] may, from time to time, by notification in the official Gazette, appoint any person, by name or by virtue of his office, to be a notary public under this Act and to exercise his functions as such within any local area, and may, by like notification, remove from office any notary public appointed under this Act.

The words in square brackets were substituted for "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937. "Local Government" was previously substituted for the words "Governor General in Council" by s. 2 and Sch. Pt. I of the Decentralization Act, 1914 (IV of 1914).

139. Power to make rules for notaries public.—The [Central Government] may, from time to time, by notification in the official Gazette make rules consistent with this Act for the guidance and control of notaries public appointed under this Act, and may, by such rules (among other matters), fix the fees payable to such notaries.

The words in square brackets were substituted for "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937. "Local Government" was previously substituted for the words "Governor General in Council" by s. 2 and Sch. Pt. I of the Decentralization Act, 1914 (IV of 1914).

For a notification under this section, see General Rules and Orders, Vol. II, p. 279.

SCHEDULE.

[Enactments repealed.]

Repealed by the Repealing and Amending Act, 1891
(XII of 1891).

APPENDIX C

GILTEDGE SECURITIES—CENTRAL AND PROVINCIAL GOVERNMENT LOANS—LOANS OF INDIAN STATES AND LOCAL PUBLIC BODIES.

GOVERNMENT OF INDIA LOANS :

RUPEE LOANS

Amount Outstanding Rs.	Interest per cent.	Year of Issue	Repayable in	Interest due
Non-Terminable loans				
8,86,06,000	3	1896-97	At the option of the Govt. after 3 months' notice	30-6/31-12
71,79,14,000	3½	1842-43		1-2/1-8
39,54,37,000	3½	1854-55		30-6/31-12
65,75,36,000	3½	1865		1-5/1-11
18,08,93,000	3½	Reduced 1879		16-1/16-7
77,73,05,000	3½	1900-01		30-6/31-12
Terminable loans				
62,01,28,000	2¾	1936	1948-52	1-6/1-12
91,17,47,000	3	1938	1963-65	1-6/1-12
86,72,72,000	3	1935	1951-54	15-3/15-9
65,14,32,000	3	1940	1947-46	1-8/1-2
66 63,53,000	3	1941	1949-52	1-8/1-2
114,54,88,000	3	1943	1953-55	15-1/15-7
110,11,78,000	3	1943	1966-68	1-4/1-10
62,74,54,000	3	1944	1957	1-3/1-9
55,94,37,000	3½	1933	1947-50	15-5/15-11
63,30,26,000	4	1926	1960-70	15-3/15-9
9,05,64,000	4½	1928	1955-60	15-5/15-9
96,74,94,000	5*	1919	1945-55	..

PROVINCIAL GOVERNMENT RUPEE LOANS :

Amount Outstanding Rs.	Interest per cent.	Year of Issue	Repayable in	Interest due
9,95,22,400U	3	1937	1952	1-3/1-9
2,85,22,400U	3	1936	1961-66	15-3/15-9
3,98,25,600P	4	1933	1948	1-3/1-9
1,62,14,500P	3	1938	1958	15-2/15-8
1.72,92,000C	3	1939	1949	21-6/21-12
96,61,500P	3	1937	1952	1-3/1-9
57,34,900N	3	1937	1952	1-3/1-9
47,16,300C	3	1937	1952	1-3/1-9
18,95,000M	3	1937	1952	1-3/1-9
1,42,08,300M	3	1938	1953	15-3/15-9
1,43,09,000M	3	1939	1959	..
2,39,48,700P	3	1939	1949	15-2/15-8
50,00,000A	3	1940	1952	..
3,54,23,300B	3	1942	1955	..
3,50,00,000U	3	1944	1958	15-2/15-8

(A)—Assam. (B)—Issued in London in conversion of the 4½% Loan.
(C)—Central Provinces. (M)—Madras. (N)—North-West Frontier Provinces.
(P)—Punjab. (U)—United Provinces. (*)—Income-Tax Free.

APPENDIX C—*contd.*

Amount Outstanding Rs.	Interest per cent.	Year of Issue	Repayable in	Interest due
		MYSORE GOVERNMENT LOANS		
1,63,44,300	5*	1930	1955	1-11/1-5
2,95,85,200	4*	1933	1953-63	1-6/1-12
50,00,000	3½*	1934	1951-58	15-6/15-12
1,99,72,900	3*	1936	1956-61	20-10/20-4
		COCHIN STATE LOANS		
30,00,000	3½‡	1936	1956-61	..
		TRAVANCORE GOVERNMENT LOAN		
50,00,000	3½	1936	1956	..
3,00,00,000	5	1944	1952-54	..
		LOCAL PUBLIC BODIES—RUPEE DEBENTURES :		
		CALCUTTA PORT TRUST		
90,24,300	4	1914	1974	1-4/1-10
76,90,100	4	1915	1975	..
45,39,000	5	1916	1946	15-2/15-8
68,02,300	3	1921	1981	1-10/1-4
,50,00,000	6½	1921	1981	1-1/1-7
,24,06,300	6	1925	1955-85	29-3/29-9
98,21,600	5½	1926	1956-88	15-5/15-11
99,84,500	5	1926	1956-86	4-4/4-10
,49,49,500	5	1927	1957-87	1-3/1-9
,49,30,000	5	1931	1958-88	15-3/15-9
0,00,000H	4	1931	1991	15-4/15-10
1,75,000H	3	1933	1954	1-7/1-1
60,00,000	3¾	1933	1965	15-3/15-9
50,00,000	3¼	1937	1956-66	20-2/20-8
,25,00,000	3	1937	1951	1-6/1-12
25,00,000	3	1938	1963-68	..
		CALCUTTA IMPROVEMENT TRUST		
50,00,000	6	1925	1955	6-4/6-10
25,00,000	5½	1929	1959	18-3/18-9
50,00,000	4	1934	1964	14-2/14-8
35,00,000	3½	1935	1965	13-3/13-9
30,00,000	3	1936	1966	7-2/7-8
50,00,000	3	1937	1962	30-1/30-7
20,00,000	3	1938	1963-68	13-3/13-9

)—Income-Tax Free. (‡)—Free of Cochin Income-Tax.

)—Held by the Commissioners.

APPENDIX C—*contd.*

Amount Outstanding Rs.	Interest per cent.	Year of Issue	Repayable in	Interest due
		BOMBAY IMPROVEMENT TRUST		
50,00,000	4	1899	1959	1-5/1-11
20,00,000	4	1901	1961	1-1/1-7
30,00,000	4	1902	1962	,,
60,00,000	4	1903	1963	,,
50,00,000	4	1904	1964	,,
30,00,000	4	1905	1965	,,
20,00,000	4	1906	1966	,,
15,00,000	4	1907	1967	,,
30,00,000	4	1908	1968	,,
25,00,000	4	1912	1972	Jan. & July
18,00,000	4	1913	1973	,,
50,00,000	4	1914	1974	,,
25,00,000	4	1916	1976	,,
40,00,000	5	1919	1959-79	1-5/1-11
70,00,000	6	1920	1980	,,
25,00,000	5	1926	56-86	1-1/1-7
25,00,000	4	1927	1961-70	,,
25,00,000	5½	1929	1944	,,
10,00,000	5	1932	1943	31-3/30-9
10,00,000	3½	1963	1966	,,
		CALCUTTA MUNICIPALITY		
21,16,300	4	1915	1945	Mar.-Sep.
11,04,500	5½	1919	1945	Aug -Feb.
17,56,600	5½	1920	1950	July-Jan.
54,50,000	6½	1920	1950	June-Dec.
24,50,000	6½	1921	1951	,,
5,65,500	6½	1924	1946	May-Nov.
34,45,500	6½	1925	1955	July-Jan.
84,70,000	6	1925	1955	Sept.-Mar.
36,00,000	5	1928	1955	May-Nov.
25,00,000	5	1929	1957	Feb.-Aug.
25,00,000	5	1929	1958	,,
33,00,000	6¼	1931	1950-60	,,
32,50,000	6¼	1931	1951-61	,,
3,11,400	6	1931	1948	Jan.-July
5,19,000	6½	1932	1949	Sept.-Mar.
7,78,400	6	1932	1949	Aug.-Feb.
10,00,000	5½	1932	1962	Apr.-Oct.
8,06,300	4½	1933	1950	June-Dec.
16,13,900	4	1933	1950	Apr.-Oct.
15,70,400	3½	1934	1951	June-Dec.
33,91,000	3½	1935	1965	Jan.-July
7,92,000	3	1936	1953	,,
60,00,000	3	1935	1966	Apr.-Oct.
47,50,000	3	1938	1968	June-Dec.
10,67,700	3	1938	1955	June-Dec.
15,56,800	4	1939	1956	..
15,56,800	4	1940	1957	..

APPENDIX C—*contd.*

Amount Outstanding Rs.	Interest per cent.	Year of Issue	Repayable in	Interest due
		BOMBAY MUNICIPALITY		
43,00,000	4	1915	1945	1-5/1-11
24,75,000	4	1905-07	1940	Feb.-Aug.
15,00,000	4	1909	1949	May-Nov.
30,00,000	4	1909-10	1949	May-Nov.
30,00,000	4	1920	1951	Jan.-July.
49,40,000	4	1913-14	1954	June-Dec.
20,60,000	4	1913-14	1974	June-Dec.
20,60,000	4	1913-15	1955	May-Nov.
17,00,000	5	1986-91	1946	,,
10,00,000	5	1986-91	1948	,,
43,00,000	5	1986-91	1958	,,
10,00,000	6	1920	1980	Jan.-July
60,00,000	5	1924-25	1954	June-Dec.
25,00,000	5	1928	1958	Jan.-July
26,14,000	5	1929	1949-59	Feb.-Aug.
8,45,000	5	1929	1954-59	,,
26,21,500	5	1929	1959	,,
40,00,000	6	1930	1950-60	June-Dec.
9 00,000	$3\frac{1}{2}$		1966	1-2/1-8
24,50,000	3		1967	1-2/1-8
30,00,000	3		1968	14-3/14-9

APPENDIX D

This is an exact reproduction of the short method of the "Analysis of Depositors' Accounts" published by the Federal Reserve Bank of New York.

ANALYSIS OF DEPOSITORS' ACCOUNTS.

The analysis of a depositor's account is the process of determining the profit or loss on the account and is governed by the usual principles of cost accounting. In the application of those principles it is found that four general factors are to be considered:

1. The amount of the depositor's balance that can be loaned or invested.

2. The amount of income that such a balance when loaned produces at the average net rate on loans and investments.

3. The amounts of all disbursement and other revenue directly traceable to the account, and

4. The amount of the bank's general expense which should be equitably apportioned to the account.

DETERMINING GROSS PROFIT OR LOSS: A certain amount of preparatory work is necessary in order to apply 1, 2 and 3. This work will include: finding the net yield on money loaned, the time necessary to collect items, average reserve maintained, etc., etc.

By the use of these figures in connection with those of a given account, it will be possible to determine the gross profit or loss in a very few minutes, a result that in many cases will be considered a sufficiently reliable gauge of the value of the account.

DETERMINING NET PROFIT OR LOSS: If it is desired to ascertain the net profit or loss, a portion of the general expenses must be included. This, also, will require some preparatory work (the method is briefly described in *post* pages, which, however, ordinarily need be done only once during the year.

A greater part of the effort to offer a workable plan has been devoted to the disposition of item 4. As any apportionment as exact as theory demands might prove too expensive for a smaller bank to operate, the method is considerably abridged and averages have been adopted throughout.

The figures employed are hypothetical, intended only to illustrate the method and, therefore, should not be used for comparison with actual results.

THE METHOD OF ANALYSIS ADOPTED herein is divided into two parts; first, example forms A and B, analyzing and assembling the information concerning an account, followed by notes of explanation to be found on *post* pages; and second, tables 1 and 2 with accompanying rules indicating the distribution of overhead or general expenses.

ANALYSIS OF ACCOUNT. Form A.

JOHN DOE — *September*, 1915.

Name of Depositor. — Period of Analysis.

Date.	Daily Balances. Dr.	Daily Balances. Cr.	Amounts in Transit. 1 day.	Amounts in Transit. 2 days.	Amounts in Transit. 4 days.	Amounts in Transit. 8 days.	Exchange. Paid.	Exchange. Received.
1		$ 1,900			$ 500		$ ·25	$·50
2		2,000	$ 1,200					
3		3,010	1,800		500			
4		3,765		$1,900		$ 100		
5		3,765						
6		1,800	500			50		
7	$ 300				80			
8		1,000			270			
9		4,900	1,000					
10		2,200				500		
11		3,000		2,000	400			
12		3,000						
13		4,500	1,500		150			
14	200					270		
15		2,700			510			·30
16		3,500	2,000					
17		3,900	1,000		70			
18		4,200		3,000		180	2·50	3·50
19		4,200						
20		2,100			200			
21		5,700	1,500			400		
22		4,500			300			
23	500							
24		4,160	1,000		120			
25		2,200		1,000	200			
26		2,300						
27		2,800						
28		1,500						
29		2,400						
30		2,200						
31								
Totals	$ 1,000*	$ 83,500	$ 11,500	$7,900	$3,300	$1,500	$ 2·75 (a)	$ 4·30 (c)

(*a*) One day's interest on overdraft say 17*c*.

(*b*) Average $ 2,750 per day in a 30-day month.

$ 11,500	for 1 day	..	.. $ 11,500
7,000	,, 2 days	..	.. 15,800
3,300	,, 4 days	..	.. 13,200
1,500	,, 8 days	..	.. 12,000
	(Divide by 30)		.. $ 52,500
	(*c*) Average per day		.. $ 1,750

* Supposedly unavoidable debits used for illustration in analysis

SUMMARY OF ANALYSIS.

From B.

JOHN DOE — *September* 1915.

Name of Depositor. — Period of Analysis.

INCOME EARNING BALANCE.

1.	Average daily balance ((b)—Form *A*) ..			$ 2,750
2.	*Less*—Average in transit ((*c*)—Form *A*)			1,750
3.	*Net* Cash daily balance			$ 1,000
4.	*Less*—Reserve,			
	In Vault	(4%)	$40	
	With Federal Reserve Bank ..	(6%)	80	
	With reserve agents	(0%)	0	120
	Income Earning Remainder ..	(88%)		$ 880

SUMMARY OF ANALYSIS—*Concluded.*

FORM A—*concluded.*

No.	GROSS PROFIT OR LOSS.	Expense.	Income.
	Income earning remainder employed as follows:—		
4.	With reserve agents .. .. ..(0%)at 0%		
5.	With other banks.. .. .. ..(3%) at 2%		.05
6.	Loaned and invested .. .. ..(85%) at 4.763%		3.37
7.	EXCHANGE:		
	Received on items .. .. ..((*e*)—Form *A*)		4.30
	Paid for collection .. .. ..((*d*)—Form *A*)	2.75	
8.	INTEREST:		
	Received on overdrafts ((*a*)—Form *A*) $ 1,000 at %		.17
	Paid on average balance ((*b*)—Form *A*) $ 2,750 at 2%	4.52	
	MISCELLANEOUS:	7.27	7.89
		.62	
	GROSS PROFIT✓ LOSS	7.89	7.89
	NET PROFIT OR LOSS ✓		
	Gross profit or loss brought down		.62
	OVERHEAD COST:		
9.	Charge for ACTIVITY .. 163 items at .0233 each	3.80	
10.	Charge for Size—cash balance .. $1,000 at 2.05 per annum	.17	
11.	Charge for NUMBER .. at 4.08 per annum	.34	
		4.31	.62
	NET PROFIT LOSS✓		3.69
		4.31	4.31

NOTE: Numerals in heavy faced type refer to explanations, *infra.*

NOTES EXPLAINING HOW FORMS A AND B ARE USED IN PRACTICE.

The first point to be ascertained is what portion of the account is available to the Bank for loaning purposes. This entails the deduction of the items in transit and the Reserve percentage from the Balance carried on the account. The analysis provides for a period of one month and arrives at the balance available for loaning purposes as follows:—

INCOME EARNING BALANCE.

(1) **Average daily balance for month**: This is taken from the figures which represent ledger balances shown on Form A.

(2) **Amount in transit**: All items received for deposit are listed daily according to the number of days required to collect them and at the end of the month the totals are multiplied by the respective number of days, and the resulting total figure divided by the number of days in the month. This will give the average Amount in Transit daily.

(3) **Net Average Daily Balance**: The difference between the two above amounts will be Net Average daily balance. This is the true or cash balance.

(4) **Reserve**: The portions of the Net Balance carried as Reserve (on which no interest is received) are next ascertained and set out as a deduction.

GROSS PROFIT OR LOSS.

(5) **Excess Reserve**: The percentage of total deposits (sometimes known as Secondary Reserve), carried with correspondents for various reasons, is then taken into consideration. The same percentage of the Net Balance of the Depositor's account is also taken, and deducted from the Net Daily Balance of the account. Any interest

received on such Excess Reserve is taken into account in the Income column on the Summary.

The remainder of the Net Balance is the balance available to the Bank for loaning purposes, on which is figured (for one month) interest at the average net rate received on loans for the current period, and the result extended into the "income" column.

(6) **Interest on balance available for loaning purposes:** In this example the total interest on $1,220,000, loaned or invested, by the bank is assumed to be $73,200. Deducting the expenses against this, estimated at $15,086 (see Table I, page 429) a net average earning rate of 4,763% per annum on loans is reached.

(7) **Exchange:** Exchange received from customers, and exchange paid on items received from them, are listed daily in the columns provided for that purpose on Form A, and the totals of these columns carried into the Summary (Form B).

(8) **Interest:** The actual amount of interest paid to the customers or the actual amount collected from customers on overdraft balances is next brought into the Summary.

The above items of Income and Expense together with any miscellaneous revenue or expense in connection with the particular account, such as special check book furnished or sold to the customer, saleable exchange received from him or furnished to him at a profit or loss, will give the gross profit or loss of the account.

NET PROFIT OR LOSS.

To determine the net profit or loss the general expenses of the bank have still to be considered and the proportion thereof applicable to customer's accounts ascertained and spread over the various accounts.

I. To find this proportion, the expenses of the bank are first divided among the different kinds of business done by the bank. (See example, Table I).

The principal divisions in a country bank are:

Depositors' Checking Accounts: These are charged with all expenses incidental to obtaining and handling depositors' accounts, and looking after the banks' reserves. The expenses incidental to the investing of the depositors' money come under the next head, that of :—

Capital, Surplus, Undivided Profits and Loans: These are charged with all expenses incidental to making loans and investments and the carrying on of the general business of the bank not covered by special divisions.

Savings and Certificates: These are charged with all expenses incidental to obtaining and looking after these accounts. The expense of investing the funds is borne by Capital and Surplus division.

Other Divisions: These include currency, foreign exchange, brokerage, credit department, trust department, etc. In the example given, details have not been carried out but the expenses simply grouped together under "Other Divisions."

In Table I, page 429, the distribution of expenses among these divisions is given with explanations following.

II. The expenses applicable to depositors' accounts having thus been obtained, they have still to be apportioned among the individual depositors.

They must be divided according to:

1. Activity of Accounts.
2. Size of Accounts
3. Number of Accounts.

This further sub-division is shown in Table II.

The result of the method of ascertaining the profit or loss on an individual account can now be arrived at.

Tables I and II have shown how to arrive at expenses applicable to depositors' accounts and also how to sub-divide this total according to activity, size and number of accounts. In the example given the figures are as follows:

1.	Activity	$8,891.00
2.	Size	2,053.00
3.	Number	4,752.00
	Total Expense of Depositors' Accounts	$15,696.00

These expenses are now apportioned to individual depositors as follows:

(9) **Activity:** This expense is distributed to the individual accounts according to the number of items handled in each account whether debits or credits. In the example given the total number of items handled by the bank in the year was 380,388. The entire activity expense of the bank was $8,891·00 making the cost $·0233, per item. There were 163 items in this particular depositors' account, making the proportionate charge for activity expense against this account $3·80 for the month.

NOTE: A more accurate method would sub-divide the items into classes, such as: Home, Town, Country Clearing House, etc., and obtain the cost of each. For obvious reasons such detail is omitted in an abridged method.

(10) **Size:** This expense is apportioned to the accounts according to the amount of balance carried. Assuming in this example that the deposits of the bank are one million dollars and the " Size " distribution $2·053, it will be seen that the apportionment will be at the rate of $2·05 per $1,000 per year, on $·17 for one month.

(11) **Number:** This expense is divided equally over the number of accounts irrespective of activity or size. In the example given there are 1165 depositors. The total expenses are $4,752,00, making a charge of $4·08 per annum or 34 cents per month against each depositor.

These figures complete the analysis which shews that the bank is sustaining a loss at the rate of $3·69 a month or $44·28 a year on this depositor's account.

The analysis brings out the following facts:

1. That uncollected items are being credited as cash, making the apparent balance of the account more than twice the real balance.
2. That interest is being paid on such uncollected items.
3. That the bank is incurring considerable expense due to the activity of the account and lesser amount due to its size and its relation to the total number of accounts.

TABLE I.

Distribution of Expense According to Divisions of Business

Expense Accounts.	Depositors Checking Accounts.	Capital, Surplus and Undivided Profits and Loans.	Savings and Certificates.	Other Divisions of Business.	Totals.
Officers' Salaries ..	$3,300	$6,600	$550	$550	$11,000
Employees' Salaries ..	5,200	650	325	325	6,500
Rent	4,250	1,250	1,000	1,000	7,500
Taxes	..	5,000	....	....	5,000
Stationery and Printing etc.	1,000	250	125	125	1,500
Other Supplies ..	333	83	42	42	500
Telephone and Telegraph..	333	83	42	42	500
Postage	417	104	52	52	625
Light and Heat ..	170	50	40	40	300
Insurance	50	300	25	25	400
Surety Bonds	75	50	25	25	175
Depreciation (or maintenance)	568	156	133	133	1,000
Bad Debts and Special loss	....	500	....	....	500
Miscellaneous	....	....	....	....	....
TOTAL	$15,696	$15,086	$2,359	$2,359	$35,500

RULES FOR DISTRIBUTION ACCORDING TO DIVISION OF BUSINESS.

Officers' Salaries: The division of this expense depends on the organization of each particular bank. The general rule to be followed is that the officers' salaries should be applied to each branch of the business according to their value to that branch. This is to some extent arbitrary, but if equitably estimated will be sufficiently accurate.

Employees' Salaries: These should be apportioned according to the branch or branches in which employed. The division should be made on a time basis and presents no difficulty.

Rent, Light and Heat: This is divided among the divisions according to the space occupied. Space not chargeable direct to any division, such as lobby, should be apportioned rateably among divisions according to the space they occupy.

Taxes: These are charged to the division to which they apply—*e.g.*, General Taxes and Income Tax to Capital and Surplus and Loans. Taxes on bank building according to the rules for the division of rent. In the example given the bank does not own the bank building and therefore pays no taxes on real estate.

Stationery and Printing, etc., Telephone and Telegragh, Postage, Other Supplies: These expences should be divided according to the actual amount concurred by each division. It is not necessary to make any elaborate analysis before dividing them over the different divisions of the bank's business, a careful survey of the work done in each will enable a fair approximation to be made with very little loss of time.

Insurance, Surety Bonds: As there are different classes of insurance they are treated accordingly. Premiums for Burglary insurance and surety bonds should be divided according to the divisions of the bank's business, *i.e.*, the proportion due to the insurance of the reserves in vaults will be applicable to Depositors, checking accounts and to Savings accounts, and the insurance of securities to Capital and Surplus. Fire insurance would be divided in the same proportions as Rent.

Depreciation (or Maintenance): This is divided according to its nature. If the bank owns its building, the maintenance and depreciation would be apportioned to the divisions according to the rules laid down for Rent, as would depreciation of general fixtures. Depreciation of furniture or fixtures of a particular division would be charged accordingly.

Bad Debts and Special Losses: These are charged to Capital, Surplus and Loans as a general rule.

TABLE II.

EXPENSE OF DEPOSITORS', CHECKING ACCOUNTS (FROM TABLE I).

Distributed According to Activity, Size and Number.

Expense Accounts.	Activity.	Size.	Number.	Total.
Officers' Salaries	$1,100	$1,100	$1,100	$3,300
Employees' Salaries	2,600	886	1,734	5,200
Rent	2,188	....	1,062	4,250
Taxes	....	....	....	....
Stationery and Printing, etc. ..	666	....	334	1,000
Other Supplies	222	....	111	333
Telephone and Telegraph ..	222	....	111	333
Postage	313	....	104	417
Light and Heat	128	....	42	170
Insurance	26	12	12	50
Surety Bonds	....	75	....	75
Depreciation (or maintenance)	426	....	142	568
Bad Debts and Special Losses .	....	....	....	....
Miscellaneous	....	....	....	....
TOTALS	$8,891	$2,053	$4,752	$15,696

RULES FOR DIVISION OF DEPOSITORS' CHECKING ACCOUNTS EXPENSES, ACCORDING TO ACTIVITY, SIZE AND NUMBER OF ACCOUNTS.

Officers' Salaries: This expense is divisible among all of the above headings. No exact basis for division is possible which will apply to all banks. The proportion should be judged by the character of the business and the number of officers. In this case, equal parts have been assumed, to avoid long explanation.

Employees' Salaries: These should be divided on a time basis—*i. e.*, the time spent on handing item should go into the activity column, the time spent on book-keeping should go into the number column, the time of watchmen should go into the size column. These figures would vary according to the bank. In an active country bank, the activity portion might run about one-half to three-fourths. In a small country bank with few transactions, the greater portion of Employees' salaries would be applicable to number.

Rent, Light and Heat: Fire Insurance: As a minimum force is necessary to oandle inactive accounts, a certain portion of Rent, say one-fourth, should go to number. The balance goes to activity, as the additional space is necessitated by the increasing volume of business.

Stationery and Printing, etc.: Other Supplies, Telephone and Telegraph: These are divided according to consumption.—*e.g.*, ledgers go for number, supplies used in handing items to activity.

Postage: Should go to activity and number, say three-fourths and one-fourth, respectively.

Burglary Insurance: Should go into size column, as also the premiums on Surety bonds.

Depreciation (or Maintenance) : Depreciation of Furniture and Fixtures and Equipment is divided as follows:—to activity, that portion which applies on the Fixtures, etc., of the branches handling items only; to size of accounts, depreciation of vaults ; to number, the remainder. The major portion of Maintenance of Building goes into activity.

APPENDIX E

PART I.

A NOTE ON STAMP-DUTIES.

(See ss. 3-6, 17-24 and 27 of the Indian Stamp Act, 1899 (II of 1899).)

Save as regards any insturament executed by or on behalf of or in favour of the Govetment and saving any instrument for the sale, transfer or other disposition either absolutely or by way of mortgage or otherwise of any ship or vessel or any part, interest, share or property of or in any ship or vessel registered under the Merchant Shipping Act, 1894, or under the Act XIX of 1838, or under the Indian Registraton of Ships Act, 1841, every instrument mentioned in Schedule I to the Indian Stamp Act, 1899 (II of 1899) is assessable to stamp-duty, subject of course to the provisions of the Act and the exemptions contained in the said Schedule.

All instrument chargeable with stamp-duty have to be stamped either before or at the time of execution. And in every such instrurment shall be fully and truly set forth the considerations (if any) theretore and all other facts affecting its chargeability with stamp-duty or the amount of duty with which it is chargeable.

Every bill of exchange payable otherwise then on demand or promissory note made out of British India is chargeable with duty upon its acceptance or payment or presentment for acceptance or payment or upon its being endorsed, transferred or in anywise negotiated in British India. The first holder in British India of such a bill or note shall affix thereto the proper stamp and cancel the same.

Every other instrument mentioned in the Schedule when executed outside British India but relating to any property or thing done or to be done in British India is required to be properly stamped when it is first received in British India and it shall be stamped within, at the latest, three months from the date when it is so received.

The duty upon an instrument in which interest is expressed to be made payable is the same as if no mention of interest had been made. In other words, the duty chargeable is in respect of the principal money only.

Where more instruments than one are employed for the purpose of completing a transaction of sale, mortgage or settlement, the principal instrument only is chargeable with duty. The parties may declare the principal instrument, provided the duty payable upon it is the highest payable in respect of any instrument employed in the transaction, the remaining instruments being each chargeable with a duty of one rupee only in lieu of the duty with which they should otherwise be chargeable if they had been executed separately.

In the case, however, of an instrument drawn to comprise more than one separate matter it shall be chargeable with the aggregate amount of the duties with which each such separate instrument is chargeable. But, where an instrument is so drawn as to come within more than one description in Schedule I, it shall be charged with the highest of such duties leviable under the descriptions under which it comes. It is provided that no counterpart or duplicates of an instrument shall be charged with a duty of more than one rupee.

An instrument not being a promissory note or bill of exchange, drawn to evidence a deposit of marketable security for a loan made or to be made is chargeable only with the duty payable on an agreement or memorandum of an agreement under Article 5 (c) of the Schedule. The same is the duty payable upon an instrument which makes redeemable or qualifies a duly stamped transfer as intended as security for a loan, of any marketable security. A release or discharged of any such instrument is chargeable with the like duty.

When an instrument is drawn to transfer to any person, property, in consideration wholly or in part of any debt due to him, such an insturment is chargeable with *ad valorem* duty, provided that any duty paid in respect of the mortgage of the property to the vendee is deductible. In calculating the *ad valorem* duty or the consideration for the instrument, the unpaid principal and interest shall be taken into account, as also certainly any amount paid or payable in respect of the instrument by the vendee in excess of the debt due to him.

In the case of an instrument chargeable with *ad valorem* duty in respect of any stock or of any marketable or other security, the duty shall be calculated on the value of such security according to the average price thereof on the day the instrument is made.

Where an instrument chargeable with *ad valorem* duty is expressed in terms of money other than that of British India, such money shall be converted into British Indian currency according to the rate of exchange which for this purpose the Governor-General in Council may fix from time to time and the duty calculated on the value thus obtained of such money in terms of British Indian currency. The rate of exchange prescribed by the Governor-General in Council for conversion for the purposes of the Indian Stamp Act of British currency is Rs. 13-5-4 to £1 sterling (notification of the Government of India, Finance Department (Central Revenues) No. C 125—Stamps/25—Dated Simla the 18th September, 1925; as amended by subsequent notification No. 8 Stamps, New Delhi, the 7th Nov., 1931).

LIABILITY OF PARTIES FOR STAMP DUTY.

(*See ss.* 29 *and* 30 *of the Indian Stamp Act,* 1899 (*II of* 1899).)

A receipt given for receiving any money exceeding twenty rupees in amount must be duly stamped. Similarly, a person who receives a bill of exchange, or cheque or promissory note for an amount exceeding twenty rupees or receives in full or part satisfaction of a debt any moveable property exceeding twenty rupees in value is bound to give a receipt when asked for and he shall give it duly stamped.

In the absence of an agreement to the contrary, the person executing the instrument shall pay the stamp-duty in the case of the following instruments :—

1. Administration Bond, article 2, p. 438, *post.*
2. Agreement relating to Deposit of Title-deeds, Pawn or Pledge, article 6, p. 439, *post.*
3. Bill of Exchange, article 13, p. 441, *post.*
4. Bond, article 15, p. 442, *post.*
5. Bottomry Bond, article 16, p. 443, *post.*
6. Customs Bond, article 26, p. 446, *post.*
7. Debenture, article 27, p. 446, *post.*
8. Further Charge, article 32, p. 447, *post.*
9. Indemnity Bond, article 34, p. 448, *post.*
10. Mortgage Deed, article 40, p. 450, *post.*
11. Promissory Note, article 49, p. 455, *post.*
12. Release, article 55, p. 457, *post.*
13. Respondentia Bond, article 56, p. 457, *post.*
14. Security Bond or Mortgage Deed, article 57, p. 458, *post.*
15. Settlement, article 58, p. 458, *post.*
16. Transfer of Shares in an Incorporated Company or other Body Corporate, article 62 (*a*), p. 459, *post.*
17. Transfer of Debentures being marketable securities whether the debenture is liable to duty or not, except debentures provided for by Section 8 (*i.e.*, bonds, debentures or other securities issued by a Local Authority under the Local Authorities Loans Act, 1879, which are liable to one per centum duty on the total amount of the issue), article 62 (*b*), p. 460, *post.*
18. Transfer of any interest secured by a bond, mortgage-deed or policy of insurance, article 62 (*c*), p. 460, *post.*

In the following cases, in the absence of an agreement to the contrary, the person indicated against the instrument shall pay the duty chargeable:—

1. Policy of insurance other than fire insurance—by the person effecting the insurance.
2. Policy of fire insurance—by the person issuing the policy.
3. Conveyance (including a re-conveyance of mortgaged property)—by the grantee.
4. Lease or agreement to lease—by the lessee.
5. Counterpart of a lease—by the lessor.

6. Instrument of exchange—by the parties in equal shares.
7. Certificate of sale—by the purchaser of the property to which the certificate relates.
8. Instrument of partition—by the parties to the partition in proportion to their shares or in such proportions as the Court or Arbitrator directs when the partition is in pursuance of an order of a Court or an Arbitrator.

UPON THE KINDS OF STAMPS FOR INDICATING THE PAYMENT OF DUTY.

The stamp-duty payable in respect of any instrument chargeable with duty shall be indicated by means of stamps issued by the Government for the purposes of the Indian Stamp Act, 1899.

There are mainly two kinds of stamps for indicating the payment of duty with which an instrument is chargeable, namely, impressed and adhesive. The use of adhesive stamps is optional.

Where special stamps are issued for particular kinds of instruments, the special stamps shall be used only for the kind of instruments specified upon the stamp itself and in respect of none other.

IMPRESSED STAMPS.

All instruments except those which come within the scope of Section 11 and which may be stamped with adhesive stamps shall have to be written upon impressed stamps.

Under Section 10(2) (*c*), the Governor-General in Council has power to direct the size of the paper upon which bills of exchange or promissory notes in an oriental language shall be written. And by rule 4 (1) (*a*) and (*b*) of the Indian Stamp Rules 1925 (notification of the Government of India, Finance Department (Central Revenues) Simla, No. C. 63, Stamps, 25, dated the 5th May, 1925), it is laid down that a *hundi* payable otherwise than on demand but not more than one year after date or sight and for an amount not exceeding Rs. 30,000, shall be written on paper on which a stamp of the proper value bearing the word *hundi* has been engraved or embossed. Where a *hundi* exceeds Rs. 30,000 in amount or is payable one year after date or sight, it shall have to be written upon paper supplied for sale by the Government to which a label has been affixed by the Collector of Stamp Revenue, Calcutta or a Superintendent of Stamps, and impressed or perforated by such officer by means of a stamping machine or a perforating machine and who, after making such perforation or impression, shall write on the face of the label or labels, the date of so impressing or perforating the same and attach his usual signature immediately under such label or labels.

By rules 4 (2) and (3) of the said Rules, it is further provided that the sheet of paper upon which a *hundi* is written shall not be less than 8¼ inches long and 5¼ inches wide. Although no plain paper can be joined thereto, two or more sheets of paper on which stamps have been engraved or embossed may be used to write up the instrument, in which case they shall together make up the amount of duty chargeable in respect of the same.

Instruments, save as to those coming under Section 11 of the Act or rule 13 of the Indian Stamp Rules which may be stamped with adhesive stamps, which require to be stamped after their receipt in British India, having been executed out of it, shall, by rule 12 of the said Rules, be stamped with impressed stamps. Such instruments, upon their arrival in British India, have to be presented before the Collector of Stamp Revenue, Calcutta or a Superintendent of Stamps or other officer appointed in this behalf by the Government of India or by the Local Government of a Governor's Province, who shall, upon payment, impress them by affixing thereto the necessary label or labels and then stamping or perforating the same.

ADHESIVE STAMPS.

By Section 11 of the Indian Stamp Act, 1899, as supplemented by rule 13 of the Indian Stamp Rules, 1925, the following instruments may be stamped with adhesive stamps:—

(*a*) instruments chargeable with the duty of one anna or half an anna, except parts of bills of exchange payable otherwise than on demand and drawn in sets.

(*b*) bills of exchange payable otherwise than on demand and drawn in sets when the amount of duty does not exceed one anna for each part of the set.

(*c*) bills of exchange and promissory notes drawn or made out of British India.

(*d*) entry as an advocate, vakil or attorney on the roll of a High Court.

(*e*) notarial acts.

(*f*) transfers by endorsement of shares in an incorporated company or other body corporate.

(g) transfers of debentures of public companies or associations.

(h) copies of maps and plans and printed copies when chargeable with duty under article 24, p. 445, *post*.

(i) instruments chargeable with duty under articles 5 (*a*) and (*b*) and 43, pp. 438, 462, *post*.

(j) instruments chargeable with stamp-duty under article 47, p. 453, *post*.

(k) instruments chargeable with stamp-duty under articles 19, 36, 37, 49*a* (*ii*) and (*iii*) and 52, pp. 443 *et seq.*, *post*.

The instruments chargeable with the duty of one anna are the following, namely :—

(*i*) acknowledgment of debt exceeding twenty rupees, article 1, p. 438.

(*ii*) delivery order in respect of goods, article 28, p. 446, *post*.

(*iii*) mortgage of a crop when loan repayable not more than three months from date of instrument, for every sum secured not exceeding Rs. 200; and for every Rs. 200, or part thereof in excess of Rs. 200, article 41(*a*), p. 451, *post*.

(*iv*) policy of sea-insurance, for or upon any voyage, in certain cases, articles 47-A(1), (2), p. 453, *post*.

(*v*) policy of insurance against railway accident, valid for a single journey only, article 47-C (*a*), p. 453, *post*.

(*vi*) policy of insurance not specifically provided for, article 47-D (*i*), p. 454, *post*.

(*vii*) promissory note payable on demand, article 49, p. 455, *post*.

(*viii*) receipt for money or property exceeding Rs. 20 in amount or value, article 53, p. 456, *post*.

(*ix*) Shipping order, article 60, p. 459, *post*.

(*x*) Agreement executed for service or for performance of work in certain estates in British India or Mysore, where the advance given under the agreement does not exceed fifty rupees (notification of the Government of India, Finance Department (Central Revenues) No. 6 (Stamps) Dated Simla the 12th Sept., 1931—item 89).

It is provided that, whenever stamp-duty payable under the Act in respect of any instrument cannot be paid exactly by reason of the fact that the necessary stamps are not in circulation, the amount of deficiency arising on that account shall be made up by the affixing of one anna and half anna adhesive stamps which when available inscribed for revenue shall be revenue stamps. It is however open to a Local Government to direct that instead of such stamps adhesive court-fee stamps shall be used for the purpose.

In the case however of an instrument of transfer of shares in a company or association, if the stamp upon which it is written is subsequently found under article 62 (*a*) p. 459, *post*, to be deficient in consequence of a rise in the value of such shares, the deficiency when sought to be made up by means of adhesive stamps, has to be made up by the use of one or more such stamps bearing the word *Share Transfer*.

By rule 17 of the Indian Stamp Rules, 1925, the following instruments when stamped with adhesive stamps, shall be stamped with the following descriptions of such stamps, namely :—

(*a*) bills of exchange, and promissory notes drawn or made out of British India and chargeable with a duty of more than one anna, with stamps bearing the word *Foreign Bill*.

(*b*) separate instruments of transfer of shares and transfers of debentures of Public Companies and Associations, with stamps bearing the word *Share Transfer*.

(*c*) entry as an advocate, vakil or attorney ont he roll of any High Court with stamps, bearing the word *Advocate*, *Vakil* or *Attorney* as the case may be.

(*d*) notarial acts, with foreign bill stamps bearing the word *Notarial*.

(*e*) copies of maps or plans and printed copies certified to be true copies, with *Courtfee stamps*.

(*f*) instruments chargeable with stamp-duty under Articles 5 (*a*) and (*b*) or 43, pp. 438, *et seq.*, *post*, with stamps bearing the words *Agreement* or *Brokers' Note* respectively.

(g) instruments chargeable with stamp-duty under article 47, p. 453, post, with stamps bearing the word *Insurance.*

UPON THE WRITING OF INSTRUMENTS.

Adhesive stamps affixed to an instrument shall be cancelled upon its execution in such manner that they cannot be used again. Signing across them for this purpose is sufficient cancellation. Where an adhesive stamp so affixed is not cancelled, the instrument shall, so far as that stamp is concerned, be deemed to be unstamped.

When an instrument is written upon an impressed stamp, it has to be so written as to let the stamp appear on the face of the instrument, all the same, in such manner that it cannot be used for or applied to any other instrument. No second instrument chargeable with duty can be written upon an impressed stamp upon which one has already been written. This does not, however, prevent an endorsement, duly stamped or not, as the case may be, being made on an instrument upon an impressed stamp for the purposes of transferring any right created or evidenced by it or for the purpose of acknowledging receipt of any money or goods, the payment or delivery of which is secured thereby.

Where two or more sheets of impressed stamps are used to make up the duty upon an instrument, a portion of such instrument shall be written upon each sheet so used.

Should a single sheet of paper, not being paper bearing an impressed *hundi* stamp, be found insufficient for writing the complete instrument on the side bearing the stamp, so much plain paper may be subjoined to it as is necessary for the complete writing of such instrument, provided, however, that a substantial part (meaning the material part) of the instrument be written on the sheet bearing the stamp.

Although it is desirable to write the instrument on the side which bears the stamp, writing on the other side in order to complete the instrument does not seem to be prohibited ((1884), 7 Mad. 176).

UPON ADJUDICATION AS TO PROPER STAMP.

When there is any doubt as to the amount of duty payable under the Act in respect of any instrument, it may be brought before the Collector of the place for his opinion as to the proper stamp with which it is chargeable, and the Collector is bound by section 31 of the Indian Stamp Act, 1899, to determine the duty with which the instrument is chargeable, upon payment of such fee, not being less than eight annas and not exceeding five rupees in any case, as he may direct and upon his being furnished such additional information, besides the instrument, as he may require.

Penalties

Section 62 of the Indian Stamp Act, 1899 (II of 1899) lays down :—

(1) Any person—

(a) drawing, making, issuing, endorsing, or transferring, or signing otherwise than as a witness, or presenting for acceptance or payment or accepting, paying or receiving payment of, or in any manner negotiating, any bill of exchange (payable otherwise than on demand), or promissory note without the same being duly stamped; or

(b) executing or signing otherwise than as a witness any other instrument chargeable with duty without the same being duly stamped ; or

(c) voting or attempting to vote under any proxy not duly stamped ;

shall for every such offence be punishable with fine which may extend to five hundred rupees ;

Provided that, when any penalty has been paid in respect of any instrument under Sec. 35, Sec. 40, or Sec. 61, the amount of such penalty shall be allowed in reduction of the fine (if any) subsequently imposed under this section in respect of the same instrument upon the person who paid such penalty.

(2) If a share-warrant is issued, without being duly stamped, the Company issuing the same, and also every person who, at the time when it is issued, is the managing director or the secretary or other principal officer of the company shall be punishable with fine which may extend to five hundred rupees.

Cancellation of Stamps. Not only, is it necessary to affix the stamps, but also they must be so cancelled, that they cannot be used again. This can be done by the drawer writing his name, or the initials of his firm, and the true date of such signatures across the stamps or by any other effectual means, *e.g.*, perforation. Merely drawing two parallel lines across the stamps does not suffice, as the stamps can be used again. Failure to cancel the stamp effectually by a person, who is by Sec. 12 of the said Act required to do so, is penalised by Sec. 63 of the Indian Stamp Act, 1890, which directs the imposition of a fine up to one hundred rupees. As the Co-operative Societies are exempted from the provisions of the Stamp Act, the Registration Act, and the Income Tax Act, they are not required to pay the stamp duty, on bills, drawn by them. (Co-operative Credit Societies Act, 1912, s. 28).

36. The stamp duty with which instruments executed on behalf of any registered Co-operative Society or by any officer or member of such society relating to the business of the society are chargeable, is remitted under Government of India Notification No. 683-F., of December 28, 1912 (published under Government Resolutions 1652 and 5986 of February 20, and June 27, 1913. Revenue Department). This exemption applies to all stamps on receipts, cheques, bonds, etc., but not to Court-fee stamps.—Ewbank's Manual for Co-operative Societies in the Bombay Presidency. (Part IV [General] Chapter XXI, page 310).

Stamp duty on bills drawn on parties out of British India. Bills drawn in British India, on parties out of British India, are liable to duty under Sec. 17 of the Indian Stamp Act, 1899, and this duty should be paid at the time of their execution, but bills issued in other countries, on parties in British India, must be stamped by the first holder in India (The Indian Stamp Act, 1899, s. 19). There is an exception to this rule, in the case of bills drawn in Mysore, on which full stamp duty has been paid. Such bills are exempt in respect of their negotiation in British India, but not in respect of their presentment for acceptance or payment. When a bill, issued out of British India, is not stamped according to the law of the place where it is made, and is therefore bad under that law, and for that reason, it is perhaps void, elsewhere.* Courts, in British India, however, will take no notice of any penalties imposed by such law. When a bill or note is materially altered by the consent of parties, it becomes a new contract requiring a fresh stamp. In *International Banking Corporation* v. *A. Pestonji & Co.*, 49 Bom. 351 the plaintiff bank were holders for value of bills of exchange accepted by the defendants. The plaintiff bank noted in red ink at the top right hand corner of each bill the date of maturity. Subsequently, the plaintiffs granted extension of time for payment and the defendants altered the red ink memoradum of the due date so as to conform with the agreed extension for payment. It was held that these became new bills requiring fresh stamps and in the absence of them were inadmissible in evidence. The Privy Council however, in a subsequent case, *H. Pestonji & Co.* v. *Cox and Co.*, 52 Bom. 589, on identical facts held that there was no new contract at all and therefore no fresh stamps were necessary. The position would have been different if the due date on the face of the bill had been altered.

Stamping after execution. Bills of exchange, promissory notes, and cheques could, previous to the coming into operation of the Indian Stamp Act, 1899, be stamped even after their execution. But, after the Act came into effect, all instruments are required to be stamped and cancelled at the time the executant puts his signature to it, *i.e.*, at the time of execution. Thus in *Dayaram Surajmal* v. *Chandula* (1925) 27 Bom. L. R. 1118, the Bombay High Court held that, where a hundi was originally affixed with one anna adhesive stamp, but the stamp, not having been cancelled at the time of its execution, was cancelled at a later date, the hundi was not legally stamped, and was, therefore, inadmissible, in evidence. Instruments, which are not properly stamped, are not admissible, in evidence, except those, which are made admissible by Sec. 35 on payment of the prescribed penalty, or in a criminal court.

Sec. 35 (*a*) of the Indian Stamp Act, 1899, given below prescribes the penalties for instruments, which are not duly stamped :—

Any such instrument not being an instrument chargeable with a duty of one anna (or half an anna) only or a bill of exchange or promissory note, shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion.

PART II.

STAMP DUTY ON INSTRUMENTS.

In view of the various Amendments made by Local Governments from time to time as regards the rates of duties leviable on various instruments, a Banker would be well advised, to have the Stamp Duties set out hereunder, brought up-to-date. Imperial duties are presumed to apply where Provinces have made no amendments.

Stamp-Duty has been remitted where instrument executed in the areas set forth hereafter in respect of which the stamp-duty with which it is chargeable under the stamp law for the time being in force in the said areas has been paid in accordance with the said law (notification of the Government of India, Finance Department (Central Revenues) No. 6; Stamps,

12th September, 1931) ; Agency territories in Baluchistan ; the District of Abu ; the cantonments of Mhow, Neemuch, and Nowgong (including the Civil Lines) in the Central India Agency and Baroda ; the Indore Residency Bazars ; railway lands within the limits of the Central India and Rajputana Agencies over which the Governor-General in Council exercises jurisdiction ; the areas in the Hyderabad State in which the Governor-General in Council exercises jurisdiction through the Resident at Hyderabad ; Berar ; the Civil and Military Station of Bangalore ; railway lands in the Mysore State over which the Governor-General in Council exercises jurisdiction ; railway lands in the Baroda State and in States in the Political Control of the Government of Bombay, over which jurisdiction has been ceded to the British Government and to which the provisions of the Indian Stamp Act, 1899 (II of 1899) have been applied ; railway lands in Jammu and Kashmir and in States in the Punjab over which the Governor-General in Council exercises jurisdiction. The Governor-General in Council remitted the stamp-duty with which, under any law for the time being in force, instruments executed by or on behalf of any society for the time being registered or deemed to be registered under the Co-operative Societies Act, 1912 (II of 1912) or instruments executed by any officer or member of any such society and relating to the business of the society (other than cheques of individual members drawn against their current accounts with co-operative banks) were chargeable (notification No. 2781-F, 23rd October, 1919).

The articles set out hereunder are numbered so as to correspond with similar articles in Schedule I of the Indian Stamp Act (II of 1899).

1. **Acknowledgment of a debt** exceeding twenty rupees in amount or value, written or signed by, or on behalf of, a debtor in order to supply evidence of such debt in any book (other than a banker's pass-book) or on a separate piece of paper when such book or paper is left in the creditor's possession ; provided that such acknowledgment does not contain any promise to pay the debt or any stipulation to pay interest or to deliver any goods or other property.

   Proper Stamp-Duty.—Imperial, Bombay, Bengal, Madras, one anna.

2. **Administration-Bond** including a bond given under section 256 of the Indian Succession Act, 1865 (see now XXXIX of 1925), section 6 of the Government Savings Bank Act, 1873, section 78 of the Probate and Administration Act, 1881 (see now XXXIX of 1925) or Sec. 9 or Sec. 10 of the Succession Certificate Act, 1889 (repealed)—

   (*a*) where the amount does not exceed Rs. 1,000 ;

   Proper Stamp-Duty.—Imperial, Bombay, the same duty as article 15. " Bond ", *post* for such amount ; Bengal, the same duty as article 15. " Bond ", *post* for such amount in its application to an Administration-Bond given under section 6 of the Government Savings Bank Act, 1873 or section 291 or section 375 or section 376 of the Indian Succession Act, 1925 ; Madras, the same duty as article 15, " Bond ", *post* for such amount.

   (*b*) in any other case :

   Proper Stamp-Duty.—Imperial, five rupees; Bombay, Bengal, Madras, ten rupees.

Adoption-Deed, that is to say any instrument (other than a will) recording an adoption or conferring or purporting to confer an authority to adopt.

   Proper Stamp-Duty.—Imperial, ten rupees ; Bombay, Bengal, twenty rupees Madras, fifteen rupees.

4. **Affidavit,** including an affirmation or declaration in the case of persons by law allowed to affirm or declare instead of swearing.

   Proper Stamp-Duty.—Imperial, one rupee ; Bombay, Bengal, Madras, two rupees.

Exemptions.—Affidavit or declaration in writing when made (*a*) as a condition of enrolment under the Indian Army Act, 1911, or the Indian Air Force Act, 1932 ; (*b*) for the immediate purpose of being filed or used in any Court or before the officer of any court ; or (c) for the sole purpose of enabling any person to receive any pension or charitable allowance

5. **Agreement or Memorandum of an Agreement.**

   (*a*) if relating to the sale of a bill of exchange ;

   Proper Stamp-Duty.—Imperial two annas ; Bombay, Bengal, four annas ; Madras three annas ;

(b) if relating to the sale of a Government security, or share in an incorporated company or other body corporate;

Proper Stamp-Duty.—Imperial, subject to a maximum of ten rupees, one anna for every Rs. 10,000 or part thereof, of the value of the security or share; Bombay, Bengal, subject to a maximum of twenty rupees, two annas for every Rs. 10,000 or part thereof, of the value of the security in its application to Government securities but two annas for every Rs. 5,000 or part thereof, of the value of the share if the security is of an incorporated Company or other body corporate; Madras, subject to a maximum of fifteen rupees, one and-a-half annas for every Rs. 10,000 or part thereof, of the value of the security or share.

(c) if not otherwise provided for:

Proper Stamp-Duty.—Imperial, eight annas; Bombay, Bengal, one rupee Madras, twelve annas.

Exemptions.—Agreement or memorandum of agreement (a) for or relating to the sale of goods or merchandise exclusively, not being a Note or Memorandum chargeable under article 43, *post;* (b) made in the form of tender to the Government of India for or relating to any loan; (c) made under the European Vagrancy Act, 1874, section 17.

Stamp-Duty has been remitted in the following cases by notification of the Government of India, Finance Department (Central Revenues) No. 6, Stamps, dated 12th September, 1931; Agreement of the kind described in the Dekkhan Agriculturist's Relief Act, 1879 (XVII of 1879), section 43; agreement made with a railway company or administration or an inland steamer company for the conveyance of goods; agreement or indemnity bond given to a railway authority or an inland steamer company by a passenger permitted to travel without payment of fare, indemnifying such authority or company from any claim for damages in case of accident or injury; agreement or indemnity bond given to a railway authority or an inland steamer company by a consignee (when the railway receipt or bill of lading is not produced) in respect of the delivery of articles carried at half parcels rates or at goods rates namely; fresh fish, fruits, vegetables, bazar baskets, bread, meat, ice, and other perishable articles; agreement made with the railway company or administration which purports to limit the responsibility of the company or administration as declared by the Indian Railways Act, 1890 (IX of 1890), section 72, sub-section (1) and is in a form approved by the Governor-General in Council under sub-section (2) of that section; agreement between creditor and debtor to refer their claims to arbitration made in the Central Provinces in the course of conciliation proceedings approved by the Local Government, and the award made in virtue of such agreement; attested instrument evidencing an agreement relating to the hypothecation of moveable property where such hypothecation has been made by way of security for the repayment of money advanced or to be advanced by way of a loan, or of an existing or future debt—duty reduced to the amount chargeable on a bill of exchange under article No. 13 (b) of Schedule I of the Stamp Act, 1899, for the amount secured, if such loan or debt is repayable on demand or more than three months from the date of the instrument; and to half the amount, if such loan or debt is repayable not more than three months from the date of the instrument; unattested instrument evidencing an agreement relating to the hypothecation of moveable property, where such hypothecation has been made by way of security for the repayment of money advanced or to be advanced by way of loan or of an existing or future debt.

Agreement to Lease. See article 35, "Lease", *post.*

6. **Agreement relating to deposit of Title Deeds, Pawn or Pledge,** that is to say any instrument evidencing an agreement relating to—

(1) the deposit of title-deeds or instruments constituting or being evidence of the title to any property whatever (other than a marketable security) or

(2) the pawn or pledge of moveable property, where such deposit, pawn or pledge has been made by way of security for the repayment of money advanced or to be advanced by way of a loan or an existing or future debt.

(a) if such loan or debt is repayable on demand or more than three months from the date of the instrument evidencing the agreement:

Proper Stamp-Duty.—Imperial, Bombay,—The same duty as article 13 (b), "Bill of Exchange," *post* for the amount secured. Bengal, Madras:—

		If drawn singly Rs. As. P.	If drawn in set of two, for each part of the set Rs. As. P.	If drawn in set of three, for each part of the set Rs. As. P.
(i) where the amount of the loan or debt does not exceed Rs. 200		0 4 6	0 3 0	0 1 6
(ii) where it exceeds Rs	but does not exceed Rs.			
200 ..	400 ..	0 9 0	0 4 6	0 3 0
400 ..	600 ..	0 13 6	0 7 6	0 4 6
600 ..	800 ..	1 2 0	0 9 0	0 6 0
800 ..	1,000 ..	1 6 6	0 12 0	0 7 6
1,000 ..	1,200 ..	1 11 0	0 13 6	0 9 0
1,200 ..	1,600 ..	2 4 0	1 2 0	0 12 0
1,600 ..	2,500 ..	3 6 0	1 11 0	1 2 0
2,500 ..	5,000 ..	6 12 0	3 6 0	2 4 0
5,000 ..	7,500 ..	10 0 0 (Madras Rs. 10-2-0)	5 1 0	3 6 0
7,500 ..	10,000 ..	13 8 0	6 12 0	4 8 0
10,000 ..	15,000 ..	20 4 0	10 2 0	6 12 0
15,000 ..	20,000 ..	27 0 0	13 8 0	9 0 0
20,000 ..	25,000 ..	33 12 0	16 14 0	11 4 0
25,000 ..	30,000 ..	40 8 0	20 4 0	13 8 0
and for every additional Rs 10,000 or part thereof in excess of Rs. 30,000	..	13 8 0	6 12 0	4 8 0

(b) if such loan or debt is repayable not more than three months from the date of such instrument.

Proper Stamp-Duty.—Imperial, Bombay, half the duty payable on a Bill of Exchange, article 13 (b), *post*, for the amount secured; Bengal, half the duty payable on a loan or debt under Clause (a) (i) or clause (a) (ii) for the amount secured; Madras, half the duty payable on a loan or debt under clause (a) (i) or clause (a) (ii) for the amount secured. Stamp-duty of quarter anna shall be reckoned as half-anna and three quarter-anna as one anna.

Exemptions.—Instrument of pawn or pledge if goods unattested.

7. **Appointment in execution of a power** whether of trustees or of property moveable or immoveable, where made by any writing not being a will.

Proper Stamp-Duty.—Imperial, fifteen rupees; Bombay, (a) in its application to trustees; fifteen rupees; (b) in its application to property—moveable or immovable; thirty rupees; Bengal, Madras, twenty-five rupees.

8. **Appraisement or Valuation** made otherwise than under an order of the Court in the course of a suit—

(a) where the amount does not exceed Rs. 1,000;

Proper Stamp-Duty.—Imperial, Bombay, the same duty as a Bond, article 15, *post*, for such amount; Bengal, Madras, the same duty as a Bottomry Bond, article 16, *post* for such amount.

(b) in any other case.

Proper Stamp-Duty.—Imperial, five rupees; Bombay, Bengal, ten rupees; Madras, seven rupees eight annas.

Exemptions.—(a) Appraisement for valuation made for the information of one party only, and not being in any manner obligatory between parties either by agreement or operation of law; (b) Appraisement of crops for the purpose of ascertaining the amount to be given to a landlord as rent.

10. **Articles of Association of a Company.**

Proper Stamp-Duty.—Imperial, twenty-five rupees; Bombay, (a) where the Company has no share capital or the nominal share capital does not exceed Rs. 2,500—twenty-five rupees; (b) where the nominal share

capital exceeds Rs. 2,500 but does not exceed Rs. 1,00,000—fifty rupees; (c) where the nominal share capital exceeds Rs. 1,00,000—one hundred rupees; Bengal, (a) where the nominal share capital does not exceed one lakh of rupees—fifty rupees; (b) where nominal share capital exceeds one lakh of rupees—one hundred rupees; Madras, fifty rupees.

Exemptions.—Articles of any Association not formed for profit and registered under section 26 of the Companies Act, 1882 (now of 1913 as amended by Act XXII of 1936). *See also* article 39, "Memorandum of Association of a Company", *post.*

11. **Assignment.** See article 23, "Conveyance"; article 62, "Transfer"; article 63 "Transfer of Lease", *post*, as the case may be.

Attorney. See article 48, "Power of Attorney," *post.*

Authority to adopt. See article 3, "Adoption-Deed", *ante.*

12. **Award**, that is to say, any decision in writing by an arbitrator or umpire, not being an award directing a partition, on a reference made otherwise than by an order of the Court in the course of a suit.

(*a*) where the amount or value of the property to which the award relates as set forth in such award does not exceed Rs. 1000,;

Proper Stamp-Duty.—Imperial, the same duty as a Bond, article 15, *post*, for such amount; Bombay.—Clauses (*a*) and (*b*) were repealed by Bombay II of 1932, Part IV, s. 15 (5) (*a*). The Stamp-duty payable in Bombay in respect of an award is as follows: the same duty as for a Bond, article 15, *post*, for the amount or value of the property to which the award relates as set forth in such award subject to a maximum of twenty rupees; Bengal, the same duty as on a Bond, article 15, *post*, for such amount; Madras, the same duty as for a Bottomry Bond, article 16, *post*, for such amount.

(*b*) in any other case.

Proper Stamp-Duty.—Imperial, five rupees; Bombay, Clauses (*a*) and (*b*) were repealed by Bombay II of 1932, Part IV, s. 15 (a). The Stamp-duty payable in Bombay in respect of an award is as follows:—the same duty as for a Bond, article 15, *post*, for the amount or value of the property to which the award relates as set forth in such award subject to a maximum of twenty rupees; Bengal, if it exceeds Rs. 1,000 but does not exceed Rs. 5,000—ten rupees (the amendment to remain in force for three years only (Ben. Act XII of 1935) and for every additional Rs. 1,000 or part thereof in excess of Rs. 5,000—eight annas subject to a maximum of fifty rupees; Madras, if it exceeds Rs. 1,000, but does not exceed Rs. 5,000—ten rupees and for every additional Rs. 1,000 or part thereof in excess of Rs. 5,000—eight annas subject to a maximum of fifty rupees.

Exemptions.—Award under the Bombay District Municipal Act, 1873, section 81 (now Bombay District Municipal Act, 1901) or the Bombay Hereditary Offices Act, 1874, section 18.

Stamp-Duty has been remitted by notification of the Government of India, Finance Department (Central Revenues) No. 6, Stamps, 12th September, 1931:—In respect of decision or award of the Registrar of Co-operative Societies for the Central Provinces and the award of arbitrators in any dispute in which a Co-operative Society in British India is a party.

13. **Bill of Exchange** as defined by section 2 (2)**** (*"and (3)" expunged by the Indian Finance Act*, 1927 (*V of* 1927) *s.* 5) not being a Bond, bank-note or currency-note.

(*a*) (*expunged by the Indian Finance Act*, 1927 (*V of* 1927), *s.* 5).

(*b*) where payable otherwise than on demand but not more than one year after date or sight.

Proper Stamp-Duty.—Stamp duty chargeable on usance bills of exchange made or drawn and payable in British India and having a usance not exceeding one year has been reduced to two annas for every one thousand rupees or part thereof, by a notification dated 13th January, 1940, by the Government of India.

(*c*) where payable at more than one year after date or sight.

Proper Stamp-Duty.—Imperial, Bombay, the same duty as a Bond, article 15, *post*, for the same amount.

Exemption.—Cheques and Bills of Exchange payable on demand have been exempted from stamp-duty by the Finance Act, 1927 (V of 1927). This exemption extends also to *Hundis* payable at sight and Demand Drafts.

Stamp Duty has been remitted by notification of the Government of India, Finance Department (Central Revenues) No. 6, Stamps, 12th September, 1931:—On Bill of Exchange drawn in Mysore on which the full rate of stamp-duty has been paid there, where the same is negotiated in British India.

14. Bill of Lading (including a through bill of lading)

Proper Stamp-Duty.—Imperial, four annas; Bombay, Bengal, eight annas; Madras, six annas. *N.B.*—If a bill of lading is drawn in parts, the proper stamp therefor must be borne by each one of the set. The amendment made in respect of Bengal by the Indian Stamp (Bengal Amendment) Act, 1935, to remain in force for three years only.

Exemptions.—(*a*) Bill of lading when the goods therein described are received at a place within the limits of any port as defined under the Indian Ports Act, 1889 (now XV of 1908) and are to be delivered at another place within the limits of the same port; (*b*) Bill of lading when executed out of British India and relating to property to be delivered in British India. Bills of lading of Inland steamer companies have been exempted from the duty payable under this article, see *Gazette of India*, 1931, Part I, p. 908.

15. Bond as defined by s. 2 (5) not being a Debenture, article 27, *post*, and not being otherwise provided for by this Act, or by the Court-fees Act, 1870.

		Proper Stamp-Duty.
where the amount or value does not exceed Rs. 10 ..		Imperial, Bombay, Bengal, Madras, two annas.
Exceeding Rs.	and not exceeding Rs.	
10	50	Imperial, Bombay, Bengal, Madras, four annas.
50	100	Imperial, Bombay, Bengal, Madras, eight annas.
100	200	Imperial, Bombay, Bengal, one rupee; Madras, one rupee four annas
200	300	Imperial, one rupee eight annas; Bombay, two rupees four annas; Bengal, Madras, one rupee fourteen annas.
300	400	Imperial, two rupees; Bombay, three rupees; Bengal, three rupees (the amendment made by the Indian Stamp (Bengal Amendment) Act, 1935, to remain in force for three years only; Madras, two rupees eight annas.
400	500	Imperial, two rupees eight annas; Bombay, Bengal, three rupees twelve annas (the amendment made by the Indian Stamp (Bengal Amendment) Act, 1935, to remain in force for three years only); Madras, three rupees two annas.
500	600	Imperial, three rupees; Bombay, Bengal, Madras, four rupees eight annas.
600	700	Imperial, three rupees eight annas; Bombay, Bengal, Madras, five rupees four annas.
700	800	Imperial, four rupees; Bombay, Bengal, Madras, six rupees,
800	900	Imperial, four rupees eight annas; Bombay, Bengal, Madras, six rupees twelve annas.
900	1,000	Imperial, five rupees; Bombay, Bengal, Madras, seven rupees eight annas.
and for every Rs. 500 or part thereof in excess of Rs. 1,000 ..		Imperial, two rupees eight annas; Bombay, Bengal, Madras, three rupees twelve annas.

See "Administration Bond" article 2, *ante*, "Bottomry Bond", article 16, *post*, "Customs Bond", article 26, *post* "Indemnity Bond", article 34, *post*, "Respondentia Bond", article 56, *post*, "Security Bond", article 57, *post*.

Exemption.—Bond, when executed by (*a*) headman nominated under rules framed in accordance with the Bengal Irrigation Act, 1876, section 99, for the due performance of their duties under the Act; (*b*) any person for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital or any other subject of public utility shall not be less than a specified sum per mensem.

16. **Bottomry Bond,** that is to say, any instrument whereby the master of a seagoing ship borrows money on the security of the ship to enable him to preserve the ship or prosecute her voyage.

Proper Stamp-Duty.—Imperial, Bombay, the same duty as a Bond, article 15, *ante*, for the same amount; Bengal, Madras :—

where the amount or value secured does not exceed Rs. 10	three annas.
where it exceeds Rs. 10 and does not exceed Rs. 50	six annas.
,, ,, ,, 50 ,, ,, ,, ,, 100	twelve annas.
,, ,, ,, 100 ,, ,, ,, ,, 200	one rupee eight annas.
,, ,, ,, 200 ,, ,, ,, ,, 300	two rupees four annas.
,, ,, ,, 300 ,, ,, ,, ,, 400	three rupees.
,, ,, ,, 400 ,, ,, ,, ,, 500	three rupees twelve annas
,, ,, ,, 500 ,, ,, ,, ,, 600	four rupees eight annas.
,, ,, ,, 600 ,, ,, ,, ,, 700	five rupees four annas.
,, ,, ,, 700 ,, ,, ,, ,, 800	six rupees.
,, ,, ,, 800 ,, ,, ,, ,, 900	six rupees twelve annas.
,, ,, ,, 900 ,, ,, ,, ,, 1,000	seven rupees eight annas.
and for every ,, 500 or part thereof in excess .. 1,000	three rupees eight annas.

17. **Cancellation.**—Instrument of (including any instrument by which any instrument previously executed is cancelled), if attested and not otherwise provided for.

Proper Stamp-Duty.—Imperial, Bombay, five rupees; Bengal, Madras, seven rupees eight annas.

See also "Release", article 55, *post*, "Revocation of settlement", article 58-B, *post*, "Surrender of Lease", article 61, *post*, "Revocation of Trust", article 64-B, *post*.

Stamp-Duty has been remitted by notification of the Government of India, Finance Department (Central Revenues) No. 6, Stamps, 12th September, 1931 :—On Instrument cancelling a will.

18. **Certificate of Sale,** (in respect of each property put up as a separate lot and sold, granted to the purchaser of any property sold by public auction by a Civil or Revenue Court, or Collector or other Revenue Officer—

(*a*) where the purchase money does not exceed Rs. 10;

Proper Stamp-Duty.—Imperial, two annas; Bombay, four annas; Bengal, four annas (the amendment made by the Indian Stamp (Bengal Amendment) Act, 1935, to remain in force for three years only); Madras, three annas.

(*b*) When the purchase money exceeds Rs. 10 but does not exceed Rs. 25;

Proper Stamp-Duty.—Imperial, four annas; Bombay, eight annas; Bengal, eight annas (the amendment made by the Indian Stamp (Bengal Amendment) Act, 1935, to remain in force for three years only); Madras, six annas.

(*c*) in any other case.

Proper Stamp-Duty.—Imperial, Bombay, Bengal, Madras, the same duty as a Conveyance, article 23, *post*, for a consideration equal to the amount of the purchase-money only.

19. **Certificate or other Document** evidencing the right or title of the holder thereof, or any other person, either to any shares, scrip or stock in or of any incorporated company or other body corporate, or to become proprietor of shares, scrip or stock in or of any such company or body.

Proper Stamp-Duty.—Imperial, Bombay, two annas.

See also " Letter of Allotment of Shares", article 36, *post*.

20. Charter-Party, that is to say, any instrument (except an agreement for the hire of a tug-steamer) whereby a vessel or some specified principal part thereof is let for the specified purposes of the charterer whether it includes a penalty clause or not.

Proper Stamp-Duty.—Imperial, one rupee; Bombay, Bengal, Madras, two rupees.

21. Cheque. (*The article has been expunged by the Finance Act, 1927 (V of 1927)*.)

22. Composition-deed, that is to say, any instrument executed by a debtor whereby he conveys his property for the benefit of his creditors or whereby payment of a composition or dividend on their debts is secured to the creditors, or whereby provision is made for the continuance of the debtor's business under the supervision of inspectors or under letters of license for the benefit of his creditors.

Proper Stamp-Duty.—Imperial, ten rupees; Bombay, Bengal, twenty rupees; Madras, fifteen rupees.

23. Conveyance (as defined by section 2 (10)) not being a Transfer charged or exempted under article 62, *post*, where the amount or value of the consideration for such conveyance as set forth therein—

*Proper Stamp-Duty.**

Does not exceed Rs. 50		Imperial, Bombay, eight annas; Bengal, Madras, twelve annas.
Exceeding	and not exceeding.	
Rs.	Rs.	
50	100 ..	Imperial, Bombay, one rupee; Bengal, Madras, one rupee eight annas.
100	200 ..	Imperial, Bombay, two rupees; Bengal, Madras, three rupees.
200	300 ..	Imperial, three rupees; Bombay, four rupees eight annas *save as to the City of Bombay, and the Cities of Ahmedabad, Poona and Karachi where the following rates are applicable; The City of Bombay—eight rupees eight annas; The Cities of Ahmedabad, Poona and Karachi—six rupees eight annas* (*vide* s. 18 *of* Bom. II of 1932 as amended by s. 2 of Bom. VI of 1932); Bengal, Madras, four rupees eight annas.
300	400 ..	Imperial, four rupees; Bombay, six rupees, *save as to the City of Bombay and the Cities of Ahmedabad, Poona and Karachi, where the following rates are applicable: The City of Bombay—twelve rupees; The Cities of Ahmedabad, Poona and Karachi—nine rupees* (*vide* s. 18 of Bom. II of 1932 as amended by s. 2 of Bom. VI of 32); Bengal, Madras, six rupees.
400	500 ..	Imperial, five rupees; Bombay, seven rupees eight annas, *save as to the City of Bombay and the Cities of Ahmedabad, Poona and Karachi, where the following rates are applicable: The City of Bombay, fifteen rupees eight annas; The Cities of Ahmedabad, Poona and Karachi—eleven rupees eight annas* (*vide* s. 18 of Bom. II of 1932 as amended by s. 2 of Bom. VI. of 1932); Bengal, Madras, seven rupees eight annas.
500	600 ..	Imperial, six rupees; Bombay, nine rupees, *save as to the City of Bombay and the Cities of Ahmedabad, Poona and Karachi, where the following rates are applicable: The City of Bombay, nineteen rupees; The Cities of Ahmedabad, Poona and Karachi fourteen rupees* (*vide s.* 18 of Bom. II of 1932 as amended by s. 2. of Bom. VI of 1932); Bengal, Madras, nine rupees.
600	700 ..	Imperial, seven rupees; Bombay, ten rupees eight annas, *save as to the City of Bombay and the Cities of Ahmedabad, Poona and Karachi, where the following rates are applicable: The City of Bombay, twenty-two rupees eight annas; The Cities of Ahmedabad, Poona, and Karachi—sixteen rupees eight annas* (vide s. 18 of Bom. II of 1932 as amended by s. 2 of Bom. VI of 1932); Bengal, Madras, ten rupees eight annas.

* As to surcharge duty in respect of Madras, see p. 445, post.

700	800 ..	Imperial, eight rupees; Bombay, twelve rupees, *save as to the City of Bombay and the Cities of Ahmedabad, Poona and Karachi where the following rates are applicable: The City of Bombay—twenty six rupees; The Cities of Ahmedabad, Poona and Karachi, nineeten rupees* (*vide* s. 18 of Bom. II of 1932 as amended by s. 2. of Bom. VI of 1932); Bengal, Madras, twelve rupees.
800	900 ..	Imperial, nine rupees; Bombay, thirteen rupees eight annas (*vide* s. 18 of Bom. II of 1932 as amended by s. 2 of Bom. VI of 1932), *save as to the City of Bombay and the Cities of Ahmedabad, Poona and Karachi, where the following rates are applicable: The City of Bombay—twenty nine rupees eight annas; The Cities of Ahmedabad, Poona and Karachi, twenty-one rupees eight annas;* Bengal, thirteen rupees eight annas; Madras, thirteen rupees eight annas.
900	1,000 ..	Imperial, ten rupees; Bombay, fifteen rupees, *save as to the City of Bombay and the Cities of Ahmedabad, Poona and Karachi, where the following rates are applicable: The City of Bombay, thirty-three rupees; The Cities of Ahmedabad, Poona and Karachi, twenty-four rupees* (*vide* s. 18 of Bom. II of 1932 as amended by s. 2 of Bom. VI of 1932); Bengal, Madras, fifteen rupees.
and for every Rs. 500 or part thereof in excess of Rs. 1,000		Imperial, five rupees; Bombay, seven rupees eight annas (*vide* s. 18 of Bom. II of 1932 as amended by s. 2. of Bom. VI of 1932), *save as to the City of Bombay and the Cities of Ahmedabad, Poona and Karachi, where the following rates are applicable: The City of Bombay, seventeen rupees eight annas; The Cities of Ahmedabad, Poona, and Karachi, twelve rupees eight annas;* Bengal, seven rupees eight annas; Madras, seven rupees eight annas.

Exemption.—Assigment of copyright by entry made under the Indian Copyright Act, 1847, (see now Act III of 1914), s. 5. *Note,* the exemption of "Assignment of Copyright" is reported to be obsolete, *vide* p. 261 of Donogh's Stamp Law; The Madras Stamp Manual, 1933, p. 95.

Stamp-Duty has been remitted by notification of the Government of India, Finance Department (Central Revenues) No. 6, Stamps, 12th September, 1931:—Sanad of Jagir or other instrument conveying land granted to an individual by the Government otherwise than for a pecuniary consideration; in the Central Provinces, conveyance by indorsement of rights secured by an instrument known as "Satta".

Surcharge Duty.—Under s. 135 of the Madras City Municipal Act, 1919, a surcharge duty of 1½ per cent. on the amount of consideration set forth in the instrument has to be paid in addition to the proper stamp-duty in the case of instruments of sale, gift and mortgage with possession of immoveable property situated within the limits of the City of Madras. G. O. 4081 L. and M., 21st September, 1926, B. P. (Mad.) 347 Mis. 13th November, 1926.

Co-Partnership Deed. See "Partnership", article 46, *post.*

24. **Copy of Extract** certified to be a true copy or extract by or by order of any public officer and not chargeable under the law for the time being in force relating to Court-fees.

(*i*) if the original was not chargeable with duty or if the duty with which it was chargeable does not exceed one rupee;

Proper Stamp- Duty.—Imperial, eight annas; Bombay, Bengal, one rupee, (the amendments made by the Indian Stamp (Bengal Amendment) Act, 1935, to remain in force for three years only); Madras, twelve annas.

(*ii*) in any other case.

Proper Stamp-Duty.—Imperial, one rupee; Bombay, Bengal, two rupees (the amendments made by the Indian Stamp (Bengal Amendment) Act, 1935, to remain in force for three years only); Madras, one rupee eight annas.

Exemptions. — (*a*) Copy of any paper which a public officer is expressly required by law to make or furnish for record in any public office or for any public purpose;

(b) Copy of, or extract from, any register relating to births, baptisms, namings, dedications, marriages, divorces, deaths or burials.

Stamp-Duty has been remitted by notification of the Government of India, Finance Department (Central Revenues) No. 6, Stamps, 12th September 1931:—for copy of an instrument which a village Registrar has to deliver to a party under the Dekkhan Agriculturists' Relief Act, 1879 (XVII of 1879), s. 58.

25. Counterpart or Duplicate of any instrument chargeable with duty and in respect of which the proper duty has been paid.

(a) if the duty with which the original instrument is chargeable does not exceed one rupee;

Proper Stamp-Duty.—Imperial, the same duty as is payable on the original; Bombay, the same duty as is payable on the original, *if the duty with which the original instrument is chargeable does not exceed two rupees;* Bengal, two rupees (the amendment made by the Indian Stamp (Bengal Amendment, Act, 1935, to remain in force for three years only); Madras, one rupee eight annas.

(b) in any other case.

Proper Stamp-Duty.—Imperial, one rupee; Bombay, two rupees; Bengal, two rupees (the amendment made by the Indian Stamp (Bengal Amendment) Act, 1935, to remain in force for three years only; Madras, one rupee eight annas.

A duplicate receipt would be liable to stamp-duty, Government of India Notification No. 2153 Finance and Commerce (S. R.) 20th July, 1883.

26. Customs Bond.

(a) When the amount does not exceed Rs. 1,000;

Proper Stamp-Duty. Imperial, Bombay, the same duty as for a Bond article 15, *post*, for such amount; Bengal, the same duty as for a Bottomry Bond article 16, *post*, for such amount.

(b) in any other case.

Proper Stamp-Duty.—Imperial, five rupees; Bombay, Bengal, Madras, ten rupees.

27. Debenture (whether a mortgage debenture or not), being a marketable security transferable,

(a) by endorsement or by a separate instrument of transfer;

Proper Stamp-Duty.—Imperial, Bombay, the same duty as for a Bond, article 15, *post*, for the same amount; Bengal, Madras, the same duty as for a Bottomry Bond, article 16, *post*, for the same amount.

(b) by delivery;

Proper Stamp-Duty.—Imperial, Bombay, Bengal, Madras, the same duty as for a Conveyance, article 23, *post*, for a consideration equal to the face amount of the debenture.

Explanation—The term "Debenture" includes any interest coupons attached thereto, but the amount of such coupons shall not be included in estimating the duty.

Exemption.—A debenture issued by an incorporated company or other body corporate in terms of a registered mortgage-deed, duly stamped in respect of the full amount of debentures issued thereunder, whereby the company or body borrowing makes over, in whole or in part, their property to trustees for the benefit of the debenture-holders; provided that the debentures so issued are expressed to be issued in terms of the said mortgage-deed.

See also "Bond", article 15, *ante*, and sections 8 and 55.

Stamp-Duty has been remitted by notification of the Government of India, Finance Department (Central Revenues) No. 6, Stamps, 12th September, 1931:—for Renewal of any of the Foreshore securities issued by the Trustees of the Port of Bombay under the provisions of s. 30 of the Bombay Port Trust Act, 1879 (Bombay Act VI of 1879).

NOTE: Certificate of registered debenture stock should be stamped under this article, 99 I.C. 315

Declaration of any Trust. See "Trust", article 64, *post*.

28. Delivery-Order in respect of Goods, that is to say, any instrument entitling any person therein named, or his assigns or the holder thereof, to the delivery

of any goods lying in any dock or port, or in any ware-house in which goods are stored or deposited on rent or hire, or upon any wharf, such instrument being signed by or on behalf of the owner of such goods upon the sale or transfer of the property therein, when such goods exceed in value twenty rupees.

Proper Stamp-Duty—Imperial, Bombay, one anna.

Deposit of Title-Deeds. See "Agreement relating to Deposit of Title-Deeds, Pawn or Pledge", article 6, *ante*.

Dissolution of Partnership. See "Partnerships", article 46, *post*.

29. **Dower** Instrument of, see "Settlement", article 58, *post*.

Duplicate. See "Counterpart", article 25, *ante*.

31. **Exchange of Property**—Instrument of.

Proper Stamp-Duty.—Imperial, the same duty as for a Conveyance, article 23, *ante*, for a consideration equal to the *value of the property, of the greatest value as set forth in such instrument;* Bombay, the same duty as for a Conveyance, article 23, *ante*, for a consideration equal to the *value of the property of the greatest value as set forth in such instrument; but, in its application to the Cities of Bombay, Ahmedabad, Poona and Karachi in respect of any instrument relating to immoveable property situate within the said cities and of the nature described in this article, the same duty as is leviable on a Conveyance, article* 23, *ante, under the Bombay Finance (Amendment) Act,* 1932 *for a consideration equal to the value of the property of the greatest value as set forth in such instrument;* Bengal, Madras, the same duty as for a Conveyance, article 23, *ante*, for a consideration equal to the value of the property of the greatest value as set forth in such instrument.

Extract. See "Copy", article 24, *ante*.

32. **Further Charge**—Instrument of that is to say, any instrument imposing a further charge on mortgaged property—

(*a*) when the original mortgage is one of the description referred to in clause (*a*) of article 40, *post* (that is with possession);

Proper Stamp-Duty.—Imperial, the same duty as for a Conveyance, article 23, *ante*, for a consideration equal to the amount of the further charge secured by such instrument; Bombay, the same duty as for a Conveyance, article 23, *ante*, for a consideration equal to the further charge secured by such instrument; *but in its application to the Cities of Bombay, Ahmedabad, Poona and Karachi in respect of any instrument relating to immoveable property situate within the said cities and of the nature described in the Article, the same duty as is leviable on a Conveyance, article* 23, *ante under the Bombay Finance (Amendment) Act,* 1932, *for a consideration equal to the amount of the further charge secured by such instrument;* Bengal, Madras, the same duty as for a Conveyance, article 23, *ante* for a consideration equal to the amount of the further charge secured by such instrument.

(*b*) when such mortgage is one of the description referred to in clause (*b*) of article 40, *post* (that is, without possession).

(*i*) if at the time of execution of the instrument of further-charge possession of the property is given or agreed to be given under such instrument.

Proper Stamp-Duty.—Imperial, the same duty as for a Conveyance, article 23, *ante* for a consideration equal to the total amount of the charge (including the original mortgage and any further charge already made) less the duty already paid on such original mortgage and further charge; Bombay, the same duty as for a Conveyance, article 23, *ante*, for a consideration equal to the total amount of the charge (including the original mortgage and any further charge already made) less the duty already paid on such original mortgage and further charge; *but in its application to the Cities of Bombay, Ahmedabad, Poona and Karachi in respect of any instrument relating to immoveable property situate within the said cities and of the nature described in the Article, the same duty as is leviable on a Conveyance, article* 23, ante, *under the Bombay Finance (Amendment) Act,* 1932, *for a consideration equal to the total amount of the charge (including the original mortgage and any further charge*

already made less the duty already paid on such original mortgage and further charge; Bengal, Madras, the same duty as for a Conveyance, article 23, *ante*, for a consideration equal to the total amount of the charge, (including original mortgage and any further charge already made) less the duty already paid on such original mortgage and further charge.

(*ii*) if possession is not so given.

Proper Stamp-Duty.—Imperial, Bombay, Bengal, the same duty as for a Bond, article 15, *ante*, for the amount of the further charge secured by such instrument; Madras, the same duty as for a Bottomry Bond, article 16, *ante* for the amount of the further charge secured by such instrument.

33. **Gift**—Instrument of, not being a Settlement, article 58, *post*, or Will or Transfer article 62, *post*.

Proper Stamp-Duty.—Imperial, the same duty as for a Conveyance, article 23, *ante*, for a consideration equal to the value of the property as set forth in such instrument; Bombay, the same duty as for a Conveyance, article 23, *ante*, for a consideration equal to the value of the property as set forth in such instrument; *but in its application to the Cities of Bombay, Ahmedabad, Poona and Karachi in respect of any instrument relating to immoveable property situate within the said cities and of the nature described in the article, the same duty as is leviable on a Conveyance, article 23, ante, under the Bombay Finance (Amendment) Act,* 1932, *for a consideration equal to the value of the property set forth in such instrument*; Bengal, Madras, the same duty as for a Conveyance, article 23, *ante*, for a consideration equal to the value of the property as set forth in such instrument.

Hiring Agreement or Agreement for Service. See "Agreement", article 5, *ante*.

34. **Indemnity Bond.**

Proper Stamp-Duty.—Imperial, Bombay, Bengal, Madras, the same duty as "Security Bond", article 57, *post* for the same amount.

Inspectorship-Deed. See "Composition-Deed", article 22, *ante*.

Insurance. See "Policy of Insurance", article 47, *post*.

35. **Lease,** including an under-lease and any agreement to let or sub-let—(*a*) whereby under such lease the rent is fixed and no premium is paid or delivered—

(*i*) Where the lease purports to be for a term of less than one year;

Proper Stamp-Duty.—Imperial, Bombay, the same duty as for a Bond, article 15, *ante*, for the whole amount payable or deliverable under such lease; Bengal, Madras, the same duty as for Bottomry Bond, article 16, *ante*, for the whole amount payable or deliverable under such lease.

(*ii*) When the lease purports to be for a term of not less than one year but not more than three years;

Proper Stamp-Duty.—Imperial, Bombay, the same duty as for a bond, article 15, *ante*, for the amount or value of the average annual rent reserved; Bengal, Madras, the same duty as for a Bottomry Bond, article 16, *ante*, for the amount or value of the average annual rent reserved; *but in its application to a lease where it purports to be for a term of not less than one year and not more than five years.*

(*iii*) where the lease purports to be for a term in excess of three years;

Proper Stamp-Duty.—Imperial, Bombay, the same duty as for a Conveyance, article 23, *ante*, for a consideration equal to the amount or value of the average annual rent reserved; Bengal, Madras (1), the same duty as for a Conveyance, article 23, *ante*, for a consideration equal to the amount of value of the average annual rent reserved; *but in its application to a lease where it purports to be for a term exceeding five years and not exceeding ten years;* Bengal, Madras (2), the same duty as for a Conveyance, article 23, *ante*, for a consideration equal to twice the amount or value of the average annual rent reserved, *in its application to a lease where it purports to be for a term exceeding ten years but not exceeding twenty years;* Bengal, Madras (3), the same duty as for a Conveyance, article 23, *ante*, for a consideration equal to three times

the amount or value of the average annual rent reserved, *in its application to a lease where it purports to be for a term exceeding twenty years but not exceeding thirty years*; Bengal, Madras, (4), the same duty as for a conveyance article 23, *ante*, for a consideration equal to four times the amount or value of the average annual rent reserved, *in its application to a lease where it purports to be for a term exceeding thirty years but not exceeding one hundred years.*

(iv) where the lease does not purport to be for any definite term ;

Proper Stamp-Duty.—Imperial, Bombay, the same duty as for a Conveyance, article 23, *ante*, for a consideration equal to the amount or value of the average annual rent which would be paid or delivered for the first ten years if the lease continued so long ; Bengal, Madras, the same duty as for a Conveyance, article 23, *ante*, for a consideration equal to three times the amount or value of the average annual rent which would be paid or delivered for the first ten years if the lease continued so long.

(v) where the lease purports to be in perpetuity ;

Proper Stamp-Duty.—Imperial, Bombay, the same duty as for a conveyance, article 23, *ante*, for a consideration equal to one-fifth of the whole amount of rents which would be paid or delivered in respect of the first fifty years of the lease.; Bengal, the same duty as for a Conveyance, article 23, *ante*, for a consideration equal in the case of a lease granted solely for agricultural purposes to one-tenth and in any other case to one-sixth of the whole amount of rents which would be paid or delivered in respect of the first fifty years of the lease *in its application to a lease where it purports to be for a term exceeding one hundred years or in perpetuity*; Madras, the same duty as for a Conveyance, article 23, *ante*, for a consideration equal to one-sixth of the whole amount of rents which would be paid or delivered in respect of the first fifty years of the lease *in its application to a lease where it purports to be for a term exceeding one hundred years or in perpetuity.*

(b) where the lease is granted for a fine or premium or for money advanced and where no rent is reserved ;

Proper Stamp-Duty.—Imperial Bombay, Bengal, Madras, the same duty as for a Conveyance, article 23, *ante.*, for a consideration equal to the amount or value of such fine or premium or advance as set forth in the lease.

(c) where the lease is granted for a fine or premium or for money advanced in addition to rent reserved.

Proper Stamp-Duty.—Imperial, Bombay, the same duty as for a Conveyance, article 23, *ante*, for a consideration equal to the amount or value of such fine or premium or advance as set forth in the lease, in addition to the duty which would have been payable on such lease, if no fine or premium or advance had been paid or delivered: *Provided* that, in any case when an agreement to lease is stamped with the *ad valorem* stamp required for a lease, and a lease, in pursuance of such agreement is subsequently executed, the duty on such lease shall not exceed eight annas. Bengal, Madras, the same duty as for a Conveyance, article 23, *ante*, for a considertion equal to the amount or value of such fine or premium or advance as set forth in the lease, in addition to the duty which would have been payable on such lease, if no fine or premium or advance had been paid or delivered: *Provided* that, in any case when an agreement to lease is stamped with the *ad valorem* stamp required for a lease, and a lease in pursuance of such agreement is subsequently executed, the duty on such lease shall not execeed twelve annas.

Exemptions.—(a) Lease, executed in the case of a cultivator and for the purposes of cultivation (including a lease of trees for the production of food or drink) without the payment or delivery of any fine or premium, when a definite term is expressed and such term does not exceed one year, or when the average annual rent reserved does not exceed one hundred rupees;

Bengal, in this exemption a lease for the purposes of cultivation shall include a lease of lands for cultivation together with a homestead or tank.

(*b*) Lease of fisheries granted under the Burma Fisheries Act, 1875 (now Bur. Act, III of 1905), or the Upper Burma Land and Revenue Regulation, 1889.

Bengal, Madras, Explanation.—When a lessee undertakes to pay any recurring charge, such as Government revenue, the landlord's share of cesses or the owner's share of municipal rates or taxes, which is by law recoverable from the lessor, the amount so agreed to be paid by the lessee shall be deemed to be part of the rent.

36. Letter of Allotment of Shares in any company or proposed company, or in respect of any loan to be raised by any company or proposed company.

See also "Certificate or other Document", article 19, *ante*.

Proper Stamp-Duty.—Imperial, Bombay, two annas.

37. Letter of Credit, that is to say, any instrument by which one person authorises another to give credit to the person in whose favour it is drawn.

Proper Stamp-Duty.—Imperial, Bombay, two annas.

Letter of Guarantee. See "Agreement", article 5, *ante*.

38. Letter of License, that is to say, any agreement between a debtor and his creditors, that the latter shall for a specified time, suspend their claims and allow the debtor to carry on his business at his own discretion.

Proper Stamp-Duty.—Imperial, Bombay, ten rupees; Bengal, fifteen rupees (the amendments made by the Indian Stamp (Bengal Amendment) Act, 1935, to remain in force for three years only), Madras, fifteen rupees.

39. Memorandum of Association of a Company—

(*a*) if accompanied by articles of association under s. 37 of the Indian Companies Act, 1882 (now the Indian Companies Act, 1913, as amended by Act XXII of 1936);

Proper Stamp-Duty.—Imperial, fifteen rupees, Bombay, Bengal, thirty rupees (the amendments made by the Indian Stamp (Bengal Amendment) Act, 1935, to remain in force for three years only); Madras, thirty rupees.

(*b*) if not so accompanied.

Proper Stamp-Duty.—Imperial, forty rupees; Bombay, eighty rupees; Bengal, (*i*) Eighty rupees *where the nominal share capital does not exceed one lakh of rupees*, (*ii*) one hundred and thirty rupees *where the nominal share capital exceeds one lakh of rupees* (the amendments made by the Indian Stamp (Bengal Amendment) Act, 1935, to remain in force for three years only); Madras, eighty rupees.

Exemption.—Memorandum of any association not formed for profit and registered under section 26 of the Indian Companies Act, 1882 (now, the Indian Companies Act, 1913, as amended by Act XXII of 1936).

40. Mortgage-Deed, not being an "Agreement relating to Deposit of Title-deeds, Pawn or Pledge", article 6, *ante*, "Bottomry Bond", article 16, *ante*, "Mortgage of a Crop", article 41, *post*, "Respondentia Bond", article 56, *post* or "Security Bond", article 57, *post*.

(*a*) when possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given;

Proper Stamp-Duty.—Imperial, the same duty as for a Conveyance, article 23, *ante*, for a consideration equal to the amount secured by such deed; Bombay, the same duty as for a Conveyance, article 23, *ante*, for a consideration equal to the amount secured by such deed; *but in its application to the Cities of Bombay, Ahmedabad, Poona and Karachi in respect of any instrument relating to immoveable property situate within the said cities and of the nature described in the Article, the same duty as is leviable on a Conveyance, article 23, ante,* under the Bombay Finance (Amendment) Act, 1932, for a consideration equal to the amount secured by such deed; Bengal, Madras, the same duty as for a Conveyance, article 23, *ante*, for a consideration equal to the amount secured by such deed.

(*b*) when possession is not given or agreed to be given as aforesaid.

Explanation—A mortgagor who gives to the mortgagee a power-of-attorney to collect rents or a lease of the property mortgaged or part thereof is deemed to give possession within the meaning of this article.

Proper Stamp-Duty.—Imperial, Bombay, Bengal, the same duty as for a Bond, article 15, *ante*, for the amount secured by such deed; Madras, the same duty as for a Bottomry Bond, article 16, *ante*, for the amount secured by such deed.

(c) when a collateral or auxiliary or additional or substituted security, or by way of further assurance for the above-mentioned purpose where the principal or primary security is duly stamped:—

for every sum secured not exceeding Rs. 1,000;

Proper Stamp-Duty.—Imperial, eight annas; Bombay, one rupee, Bengal, Madras, twelve annas.

and for every Rs. 1,000 or part thereof secured in excess of Rs. 1,000;

Proper Stamp-Duty.—Imperial, eight annas; Bombay, one rupee; Bengal, one rupee (the amendment made by the Indian Stamp (Bengal Amendment) Act, 1935, to remain in force for three years only); Madras, twelve annas.

Exemption—(1) Instrument executed by persons taking advances under the Land Improvement Loans Act, 1883, or the Agriculturists' Loans Act, 1884, or by their securities as security for the repayment of such advances; (2) Letter of hypothecation accompanying a bill of exchange.

Note.—A second mortgage in which the first mortgage merges should be stamped for the whole amount. 25B 370.

Stamp-Duty has been remitted, by notification of the Government of India, Finance Department (Central Revenues) No. 6, Stamps, 12th September, 1931, in the Punjab and the North West Frontier Province; in the United Provinces of Agra and Oudh:—Mortgage-deed executed afresh in lieu of a previous mortgage-deed for the purpose of giving effect to the provisions of s. 9 (2), of the Punjab Alienation of Land Act, 1900 (XIII of 1900) and of s. 9 (2), or s. 17 of the Bundelkhand Alienation of Land Act, 1903 (United Provinces Act II of 1903)—so much of the duty remitted as is not in excess of the duty already paid in respect of the previous mortgage-deed.

Stamp-Duty has been reduced, by notification of the Government of India, Finance Department (Central Revenues) No. 6, Stamps, 12th September, 1931:—A mortgage-deed being a collateral or auxiliary or additional security or being by way of further assurance:—in the United Provinces and the Provinces of Assam and Burma, where the principal or primary security is duly stamped, in any case in which the sum secured is in excess of Rs. 20,000—duty reduced to the amount of duty which would be chargeable under article 40 (c) of the First Schedule to the Indian Stamp Act, 1899, if the sum secured were Rs. 20,000. Duty reduced to Rs. 20 in the Presidency of Bombay, to Rs. 15 in the Presidency of Madras or in the Province of the Punjab and Rs. 10 in the Presidency of Bengal, the Central Provinces, and Province of Bihar and Orissa provided that the duty paid on the principal or primary security exceeds the amount specified for that presidency or province.

41. Mortgage of a Crop, including any instrument evidencing an agreement to secure the repayment of a loan made upon any mortgage of a crop, whether the crop is or is not in existence at the time of the mortgage—

(a) when the loan is repayable not more than three months from the date of the instruments—

for every sum secured not exceeding Rs. 200;

Proper Stamp-Duty.—Imperial, one anna; Bombay, two annas; Bengal, one and a half anna; Madras, two annas.

and for every Rs. 200 or part thereof secured in excess of Rs. 200;

Proper Stamp-Duty.—Imperial, one anna; Bombay, two annas; Bengal, one and a half anna; Madras two annas.

(b) when the loan is repayable more than three months, but not more than eighteen months from the date of the instrument—

for every sum secured not exceeding Rs. 100;

Proper Stamp-Duty.—Imperial, two annas; Bombay, Bengal, four annas (the amendments made by the Indian Stamp (Bengal Amendment) Act, 1935, to remain in force for three years only); Madras, three annas,

for every Rs. 100 or part thereof secured in excess of Rs. 100;

Proper Stamp-Duty.— Imperial, two annas; Bombay, Bengal, four annas (the amendments made by the Indian Stamp (Bengal Amendment)

Act, 1935, to remain in force for three years only); Madras, three annas.

42. **Notarial Act,** that is to say, any instrument, endorsement, note, attestation, certificate or entry not being a Protest, article 50, *post*, made or signed by a Notary Public in the execution of the duties of his office, or by any other person lawfully acting as a Notary Public.

Proper Stamp-Duty.—Imperial, one rupee; Bombay, Bengal, two rupees; Madras, one rupee eight annas.

See also "Protest of Bill of Note", article 50, *post.*

43. **Note or Memorandum** sent by a broker or agent to his principal intimating the purchase or sale on account of such principal

(*a*) of any goods exceeding in value twenty rupees;

Proper Stamp-Duty.—Imperial, two annas; Bombay, Bengal, four annas (the amendments made by the Indian Stamp (Bengal Amendment) Act, 1935, to remain in force for three years only); Madras, three annas.

(*b*) of any stock or marketable security exceeding in value twenty rupees.

Proper Stamp-Duty.—Imperial, subject to a maximum of ten rupees, one anna for every Rs. 10,000 or part thereof of the value of the stock or security; Bombay, Bengal, (*i*) two annas for every Rs. 5,000 or part thereof of the value of the stock or security, not being a Government security; (*ii*) in respect of a Government security—subject to a maximum of twenty rupees, two annas for every Rs. 10,000 or part thereof of the value of the security (the amendments made by the Indian Stamp (Bengal Amendment) Act, 1935, to remain in force for three years only); Madras, subject to a maximum of fifteen rupees, two annas for every Rs. 10,000 or part thereof of the value of the stock or security.

44. **Note of Protest by the Master of a Ship.**

Proper Stamp-Duty.—Imperial, eight annas; Bombay, Bengal, Madras, one rupee.

See also "Protest by the Master of a Ship", article 51, *post.*

Order for the Payment of Money. See "Bill of Exchange", article 13, ***ante.***

45. **Partition.**—Instrument of (as defined by s. 2 (15)).

Proper Stamp-Duty.—Imperial, Bombay, Bengal, Madras, the same duty as for a Bond, article 15, *ante*, for the amount of the value of the separated share or shares of the property.

N.B. The largest share remaining after the property is partitioned (or if there are two or more shares of equal value and not smaller than any of the other shares, then one of such equal shares) shall be deemed to be that from which the other shares are separated: *Provided always* that (*a*) when any instrument of partition containing an agreement to divide property in severalty is executed and a partition is effected in pursuance of such agreement, the duty chargeable upon the instrument effecting such partition shall be reduced by the amount of the duty paid in respect of the first instrument, but shall not be less than—Imperial, eight annas; Bombay, Bengal, one rupee (the amendment made by the Indian Stamp (Bengal Amendment) Act, 1935, to remain in force for three years only); Madras, twelve annas: (*b*) when land is held on Revenue Settlement, for a period not exceeding thirty years and paying the full assessment, the value for the purpose of the duty shall be calculated at—Imperial, Bombay, Bengal, Madras, not more then five times the annual revenue: (*c*) where a final order for effecting a partition passed by any Revenue-authority or any Civil Court, or an award by an arbitrator directing a partition, is stamped with the stamp required for an instrument of partition, and an instrument of partition in pursuance of such order or award is subsequently executed the duty on such instrument shall not exceed—Imperial, eight annas; Bombay, Bengal, one rupee (the amendment made by the Indian Stamp (Bengal Amendment) Act, 1935, to remain in force for three years only), Madras, twelve annas.

46. **Partnership—**

A—Instrument of

(*a*) where the capital of the partnership does not exceed Rs. 500 ;

Proper Stamp-Duty.—Imperial, two rupees eight annas; Bombay, Bengal, Madras, five rupees.

(*b*) in any other case.

Proper Stamp-Duty.—Imperial, ten rupees; Bombay, Bengal, Madras, twenty rupees.

B—Dissolution of—

Proper Stamp-duty.—Imperial, five rupees; Bombay, Bengal, Madras, ten rupees.

Pawn or Pledge. See "Agreement relating to Deposit of Title-deeds, Pawn or Pledge", article 6, *ante*.

47. **Policy of Insurance**—

A—Sea-Insurance (see s. 7)—

(1) for or upon a voyage—

(*i*) where the premium or consideration does exceed the rate of two annas or one-eighth per centum of the amount insured by the policy;

Proper Stamp-Duty.—Imperial, Bombay, if drawn singly, one anna; if drawn in duplicate for each part, half an anna.

(*ii*) in any other case, in respect of every full sum of one thousand five hundred rupees and also any fractional part of one thousand five hundred rupees insured by the policy;

Proper Stamp-Duty.—Imperial, Bombay, if drawn singly, one anna; if drawn in duplicate for each part, half an anna.

(2) for time—

(*iii*) in respect of every full sum of one thousand rupees and also any fractional part of one thousand rupees insured by the policy—

where the insurance shall be made for any time, not exceeding six months;

Proper Stamp-Duty.—Imperial, Bombay, if drawn singly, two annas; if drawn in duplicate for each part, half an anna.

when the insurance shall be made for any time exceeding six months and not exceeding twelve months.

Proper Stamp-Duty.—Imperial, Bombay, if drawn singly, four annas; if drawn in duplicate, for each part, two annas.

B—Fire Insurance and other classes of Insurance, not elsewhere included in this article, covering goods, merchandise, personal effects, crops and other property against loss or damage—

(1) in respect of an original policy—

(*i*) when the sum insured does not exceed Rs. 5,000;

Proper Stamp-Duty.—Imperial, Bombay, eight annas.

(*ii*) in any other case.

Proper Stamp-Duty.—Imperial, Bombay, one rupee.

(2) in respect of each receipt for any payment of a premium or any renewal of an original policy.

Proper Stamp-Duty.—Imperial, Bombay, one-half of the duty payable in respect of the original policy in addition to the amount, if any, chargeable under article 53, *post*.

C—Accident and Sickness Insurance—

(*a*) against railway accident, valid for a single journey only;

Proper Stamp-Duty.—Imperial, Bombay, one anna.

Exemption.—When insured, to a passenger travelling by the intermediate, or the third class in any railway.

(*b*) in any other case—for the maximum amount which may become payable in the case of any single accident or sickness where such amount does not exceed Rs. 1,000 and also where such amount exceeds Rs. 1,000 for every Rs. 1,000 or part thereof.

Proper Stamp-Duty.—Imperial, Bombay, two annas, *Provided* that in case of a policy of insurance against death by accident when the annual premium payable does not exceed Rs. 2-8-0 per Rs. 1,000, the duty on such instrument shall be one anna for every Rs. 1,000 or part thereof of the maximum amount which may become payable under it.

CC—Insurance by way of indemnity against liability to pay damages on account of accidents to workmen employed by or under the insurer or against liability to pay compensation under the Workmen's Compensation Act, 1923, for every Rs. 100 or part thereof payable as premium.

Proper Stamp-Duty.—Imperial, Bombay, one anna.

D—Life insurance or other Insurance not specifically provided for, except such a Re-Insurance as is described in Division E of this Article—

(i) for every sum insured not exceeding Rs. 250;

Proper Stamp-Duty.—Imperial, Bombay, if drawn singly, two annas; if drawn in duplicate, for each part, one anna.

(ii) for every sum insured exceeding Rs. 250 but not exceeding Rs. 500;

Proper Stamp-Duty.—Imperial, Bombay, if drawn singly, four annas; if drawn in duplicate, for each part, two annas.

(iii) for every sum insured exceeding Rs. 500 but not exceeding Rs. 1,000 and also for Rs. 1,000 or part thereof in excess of Rs. 1,000.

Proper Stamp-Duty.—Imperial, Bombay, if drawn singly, six annas; if drawn in duplicate, for each part, three annas.

Exemption.—Policies of life insurance granted by the Director General of Post Offices in accordance with rules for Postal Life Insurance issued under the authority of the Governor General in Council.

E—Re-Insurance by an Insurance Company which has granted a policy of the nature specified in Division A or Division B of this Article with another company by way of indemnity or guarantee against the payment on the original insurance of a certain part of the sum insured thereby.

Proper Stamp-Duty.—Imperial, Bombay, one-quarter of the duty payable in respect of the original insurance but not less than one anna or more than one rupee.

General Exemption.—Letter of cover or engagement to issue a policy of insurance; Provided that, unless such letter or engagement bears the stamp prescribed by this Act for such policy, nothing shall be claimable thereunder, nor shall it be available for any purposes, except to compel the delivery of the policy therein mentioned.

48. **Power-of-Attorney** (as defined by s. 2 (21), not being a Proxy, article 52, *post*).

(a) when executed for the sole purpose of procuring the registration of one or more documents in relation to a single transaction or for admitting execution of one or more such documents;

Proper Stamp-Duty.—Imperial, eight annas; Bombay, Bengal, one rupee (the amendment made by the Indian Stamp (Bengal Amendment) Act, 1935, to remain in force for three years only); Madras, twelve annas.

(b) when required in suits or proceedings under the Presidency Small Cause Courts Act, 1882;

Proper Stamp-Duty.—Imperial, eight annas; Bombay, Bengal, one rupee; Madras, twelve annas.

(c) when authorizing one person or more to act in a single transaction other than the case mentioned in clause (a);

Proper Stamp-Duty.—Imperial, one rupee; Bombay, Bengal, two rupees, (the amendment made by the Indian Stamp (Bengal Amendment) Act, 1935, to remain in force for three years only); Madras, one rupee eight annas.

(d) when authorizing not more than five persons to act jointly and severally in more than one transaction or generally;

Proper Stamp-Duty.—Imperial, five rupees; Bombay, Bengal, ten rupees (the amendment made by the Indian Stamp (Bengal Amendment) Act, 1935, to remain in force for three years only); Madras, seven rupees eight annas.

(e) when authorizing more than five but not more than ten persons to act jointly and severally in more than one transaction or generally;

Proper Stamp-Duty.—Imperial, ten rupees; Bombay, Bengal, twenty rupees, (the amendment made by the Indian Stamp (Bengal Amendment) Act, 1935, to remain in force for three years only); Madras, fifteen rupees.

(f) when given for consideration and authorizing the attorney to sell any immoveable property;

Proper Stamp-Duty.—Imperial, Bombay, Bengal, Madras, the same duty as for a Conveyance, article 23, *ante*, for the amount of the consideration.

(g) in any other case.

Proper Stamp-Duty.—Imperial, one rupee for each person authorized Bombay, Bengal, two rupees for each person authorized (the amendment made by the Indian Stamp (Bengal Amendment) Act, 1935, to remain in force for three years only); Madras, one rupee eight annas for each person authorized.

N.B. The term "registration" includes every operation incidental to registration under the Indian Registration Act, 1877 (now XVI of 1908).

Explanation.—For the purposes of this Article more persons than one when belonging to the same firm shall be deemed to be one person.

Note. The stamp-duty is determined not by the number of persons executing the power-of-attorney, but by the number of agents appointed, 1925, Oudh, 132.

Stamp-Duty has been remitted.—The Government of India have remitted the stamp duty chargeable on a written authority executed under Rule 1, Order XXVIII of the Civil Procedure Code by an officer actually serving the Government in a military capacity authorizing any person to sue or defend in his stead in a Civil Court. B. P. (Mad.) 21/76-R, Mis., 17th January, 1915. Stamp Duty was also remitted by notification of the Government of India, Finance Department (Central Revenues) No. 6, Stamps, 12th September, 1931 in respect of letter of authority or power-of-attorney executed for the sole purpose of authorizing one or more of the joint holders of a Government security to give on behalf of the other or others of them, or any one or more of them, a discharge for interest payable on such security or on any renewed security issued in lieu thereof: Power-of-attorney furnished to a relative, servant, or dependent under the Dekkhan Agriculturists' Relief Act, 1879 (XVII of 1879) s. 68.

49. **Promissory Note** (as defined by s. 2(22)).

(a) when payable on demand—

(i) when the amount or value does not exceed Rs. 250;

Proper Stamp-Duty.—Imperial, Bombay, one anna.

(ii) when the amount or value exceeds Rs. 250 but does not exceed Rs. 1,000;

Proper Stamp-Duty.—Imperial, Bombay, two annas.

(iii) in any other case.

Proper Stamp-Duty.—Imperial, Bombay, four annas.

(b) when payable otherwise than on demand.

Proper Stamp-Duty.—Stamp duty chargeable on promissory notes payable otherwise than on demand and having usance not exceeding one year has been reduced as in the case of "Bill of Exchange", article 13, *ante*, to two annas for every thousand rupees or part thereof, by a notification dated 22nd November, 1940, by the Government of India.

Stamp-Duty reduced.—By notification of the Government of India, Finance Department (Central Revenues) No. 6, Stamps, 12th September, 1931 on the following:—Promissory note payable on demand to a certain person, and not to order or bearer, when such note is executed by an agriculturist, and is attested at the time of execution by a Village Registrar, under s. 57 of the Dekkhan Agriculturists' Relief Act, 1879 (XVII of 1879)—Duty reduced to one anna: Promissory note payable otherwise than on demand and not payable at more than one year after date or sight, to a certain person, and not to order or bearer, when such note is executed by an agriculturist, and is attested at the time of execution by a Village Registrar, under s. 57 of the Dekkhan Agriculturists' Relief Act, 1879 (XVII of 1879)—Duty reduced to the amount chargeable under article 13 (b) of Schedule I of the Indian Stamp Act, 1899, on a bill of exchange for the same amount.

50. **Protest of Bill or Note,** that is to say, any declaration in writing made by a Notary Public, or other person lawfully acting as such, attesting the dishonour of a bill of exchange or promissory note.

Proper Stamp-Duty.—Imperial, one rupee; Bombay, Bengal, Madras, two rupees.

51. Protest by the Master of a Ship, that is to say, any declaration of the particulars of her voyage drawn up by him with a view to the adjustment of losses or the calculation of averages, and every declaration in writing made by him against the charterers or the consignees for not loading or unloading the ship, when such declaration is attested or certified by a Notary Public or other person lawfully acting as such.

Proper Stamp-Duty.—Imperial, one rupee; Bombay, Bengal, Madras, two rupees.

See also "Note of Protest by the Master of a Ship", article 44, *ante*.

52. Proxy empowering any person to vote at any one election of the members of a district or local board or of a body of municipal commissioners, or at any one meeting of (*a*) members of an incorporated company or other body corporate whose stock or funds is or are divided into shares and transferable, (*b*) a local authority, or (*c*) proprietors, members or contributors to the funds of any institution.

Proper Stamp-duty.—Imperial, Bombay, two annas.

Note.—A proxy is a power-of-attorney, of a special character and for a particular purpose herein stated, and would be chargeable under article 48 with a higher duty if it did not conform to this description (Donogh's Indian Stamp Act, p. 690).

Stamp-Duty reduced.—By notification of the Government of India, Finance Department (Central Revenue) No. 6, Stamps, 12th September, 1931 :—Proxy empowering a person to vote at a meeting of creditors—duty reduced to the rate chargeable on a proxy empowering a person to vote at any one meeting of members of an incorporated Company.

53. Receipt (as defined by s. 2 (23)) for any money or other property the amount or value of which exceeds twenty rupees.

Proper Stamp-Duty.—Imperial, Bombay, one anna.

Exemptions.—Receipt—

(*a*) endorsed on or contained in any instrument duly stamped, or any instrument exempted under the proviso to s. 3 (instruments executed on behalf of the Government) or any cheque or bill of exchange payable on demand acknowledging the receipt of the consideration-money therein expressed, or the receipt of any principal-money, interest or annuity, or other periodical payment thereby secured;

(*b*) for any payment of money without consideration;

(*c*) for any payment of rent by a cultivator on account of land assessed to Government revenue or (in the Presidencies of Fort St. George and Bombay) of Inam lands;

(*d*) for pay or allowances by non-commissioned or petty officers, soldiers, sailors or airmen of His Majesty's military, naval or air forces when serving in such capacity, or by mounted police-constables;

(*e*) given by holders of family-certificates in cases where the persons from whose pay or allowances the sum comprised in the receipt has been assigned is a non-commissioned or petty officer, soldier, sailor or airmen of any of the said forces and serving in such capacity;

(*f*) for pensions or allowances by persons receiving such pensions or allowances in respect of their service as such non-commissioned or petty officers, soldiers, sailors or airmen and not serving the Government in any other capacity;

(*g*) given by a headman or lambardar for land-revenue or taxes collected by him;

(*h*) given for money or securities for money deposited in the hands of any banker to be accounted for:

Provided that the same is not expressed to be received of, or by the hands of, any other than the person to whom the same is to be accounted for;

Provided also that this exemption shall not extend to a receipt or acknowledgment for any sum paid or deposited for or upon a letter of allotment of a share, or in respect of a call upon any scrip or share of, or in, any incorporated company or other body corporate or such proposed or intended company or body or in respect of a debenture being a marketable security.

See also "Policy of Insurance", article 47-B (2), *ante*.

Stamp-Duty remitted.—By notification of the Government of India, Finance Department (Central Revenues) No. 6, Stamps, 12th September, 1931 on the following:— Receipt given by, or on behalf of, a depositor in a Post Office Savings Bank for a sum of money withdrawn from any such Bank. Receipt endorsed by the payee on a Postal Money Order or given by the Payee to the Post Office for a sum paid to him in adjustment of a short or wrong payment of such an Order. Receipt endorsed by the holder of a Post Office Cash Certificate at the time of its discharge. Receipt or bill of lading issued by a Railway Company or Administration or an Inland Steamer Company for the fare for the conveyance of passengers or goods, or both, or animals, or for any charges incidental to the conveyance thereof or given to such Company or Administration or Inland Steamer Company for the refund of an overcharge made in respect of such fare or charges. Receipt given by a Railway Company or Administration or an Inland Steamer Company for money received by it from another Railway Company or Administration or Inland Steamer Company or from a Tramway Company or other Carrying Company on account of its share of fares or freight for the conveyance in through traffic of passengers or goods, or both, or of animals. Receipt or bill of lading issued by the Commercial Carrying Company, Ltd., for the fare for the conveyance of passengers or goods or both or receipt given by the said Company for the refund of an overcharge made in respect of such fare. Receipt given for interest paid in British India on securities of the Mysore Darbar. Receipt given for payment of interest on Government of India Promissory Notes. Receipt given by a person, for advances exceeding Rs. 20 received by him from the Government under the Agriculturists' Loans Act, 1884 (XII of 1884).

54. Reconveyance of Mortgaged Property—

(*a*) if the consideration for which the property was mortgaged does not exceed Rs. 1,000;

Proper Stamp-Duty.—Imperial, the same duty as for a Conveyance, article 23, *ante*, for the amount of such consideration as set forth in the Reconveyance; Bombay, the same duty as for a Bond, article 15, *ante*, for the amount of such consideration as set forth in the Reconveyance: Bengal, Madras, the same duty as for a Conveyance, article 23, *ante*, for the amount of such consideration as set forth in the Reconveyance.

(*b*) in any other case.

Proper Stamp-Duty.—Imperial, Bombay, ten rupees; Bengal, Madras, fifteen rupees.

55. Release, that is to say, any instrument (not being such a release as is provided for by s. 23-A) whereby a person renounces a claim upon another person or against any specified property—

(*a*) if the amount or value of the claim does not exceed Rs. 1,000;

Proper Stamp-Duty.—Imperial, Bombay, Bengal, the same duty as for a Bond, article 15, *ante*, for such amount or value as set forth in the Release; Madras, the same duty as for a Bottomry Bond, article 16, *ante*, for such amount or value as set forth in the Release.

(*b*) in any other case.

Proper Stamp-Duty.—Imperial, five rupees; Bombay, Bengal, ten rupees, (the amendment made by the Indian Stamp (Bengal Amendment) Act, 1935, to remain in force for three years only); Madras, seven rupees eight annas.

Stamp-Duty has been remitted. By notification of the Government of India, Finance Department (Central Revenues) No. 6, Stamps, 12th September, 1931, on instrument of release referred to in s. 48 of the Indian Merchant Shipping Act, 1923 (XXI of 1923).

56. Respondentia Bond, or that is to say, any instrument securing a loan on the cargo laden or to be laden on board a ship and making repayment contingent on the arrival of the cargo at the port of destination.

Proper Stamp-Duty.—Imperial, Bombay, the same duty as for a Bond, article 15, *ante*, for the amount of the loan secured; Bengal, Madras, the same duty as for a Bottomry Bond, article 16, *ante*, for the amount of the loan secured.

Revocation of any Trust or Settlement. See "Settlement", article 58, *post*; "Trust", article 64, *post*.

57. Security-Bond or Mortgage-Deed, executed by way of security for the due execution of an office, or to account for money or other property received by virtue thereof or executed by a surety to secure the due performance of a contract,—

(a) where the amount secured does not exceed Rs. 1,000;

Proper Stamp-Duty.—Imperial, Bombay, Bengal, the same duty as for a Bond, article 15, *ante*, for the amount secured; Madras, the same duty as for a Bottomry Bond, article 16, *ante*, for the amount secured.

(b) in any other case.

Proper Stamp-Duty.—Imperial, five rupees; Bombay, Bengal, ten rupees (the amendment made by the Indian Stamp (Bengal Amendment) Act, 1935, to remain in force for three years only);—Madras, seven rupees eight annas.

Exemption.—Bond or other instrument when executed—

(a) by headmen nominated under rules framed in accordance with the Bengal Irrigation Act, 1876, s. 99 for the due performance of their duties under that Act;

(b) by any person for the purposes of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital or any other object of public utility shall not be less than a specified sum per mensem;

(c) under No. 3A of the rules made by the Governor of Bombay in Council under s 70 of the Bombay Irrigation Act 1879;

(d) executed by persons taking advances under the Land Improvement Loans Act, 1883, or the Agriculturists' Loans Acts, 1884 or by their sureties as security for the repayment of such advances;

(e) executed by officers of Government or their sureties to secure the due execution of an office or the due accounting for money or other property received by virtue thereof.

58. Settlement—

A-Instrument of (including a deed of dower);

Proper Stamp-Duty—Imperial, the same duty as for a Bond, article 15, *ante*, for a sum equal to the amount or value of the property settled as set forth in such instrument: *Provided* that where an agreement is stamped with the stamp required for an instrument of settlement, and an instrument of settlement in pursuance of such agreement is subsequently executed, the duty on such instrument shall not exceed eight annas; Bombay, the same duty as for a Bond, article 15, *ante*, for a sum equal to the amount or value of the property settled as set forth in such instrument: *Provided* that where an agreement is stamped with the stamp required for an instrument of settlement, and an instrument of settlement in pursuance of such agreement is subsequently executed, the duty on such instrument shall not exceed eight annas; *But in its application to the Cities of Bombay, Ahmedabad, Poona and Karachi in respect of any instrument relating to immovable property situate within the said cities and of the nature described in the article*

(i) *where the settlement is made for a charitable purpose—The same duty as for a Bond, article 15, ante, for a sum equal to to the amount or value of the property settled as set forth in such instrument;*

(ii) *in any other case—the same duty as is leviable on a Conveyance, article 23, ante, under the Bombay Finance (Amendment) Act, 1932 for a consideration equal to the amount or value of the property settled as set forth in such instrument; Provided that where an agreement to settle is stamped with the stamp duty required for an instrument of settlement, and an instrument of settlement in pursuance of such agreement is subsequently executed, the duty on such instrument shall not exceed one rupee.*

Bengal, the same duty as for a Bottomry Bond, article 16, *ante*, for a sum equal to the amount or value of the property settled as set forth in such instrument: *Provided* that, where an agreement to settle is stamped with the stamp required for an instrument of settlement, and an instrument of settlement in pursuance of such agreement is subsequently

executed, the duty on such instrument shall not exceed one rupee; Madras, the same duty as for a Bottomry Bond, article 16, *ante*, for a sum equal to the amount or value of the property settled as set forth in such settlement: *Provided* that where an agreement to settle is stamped with the stamp required for an instrument of settlement, and an instrument of settlement in pursuance of such agreement is subsequently executed, the duty on such instrument shall not exceed twelve annas.

Exemptions. (*a*) Deed of dower executed on the occasion of a marriage between Muhammadans; (*b*) Hludawsa, that is to say, any settlement of immoveable property executed by a Buddhist in Burma for a religious purpose in which no value has been specified and on which a duty of Rs. 10 has been paid.

B-Revocation of—

Proper Stamp-Duty.—Imperial, the same duty as for a Bond, article 15, *ante*, for a sum equal to the amount or value of the property concerned as set forth in the Instrument of Revocation but not exceeding ten rupees; Bombay, the same duty as for a Bond, article 15, *ante*, for a sum equal to the amount or value of the property concerned as set forth in the Instrument of Revocation but not exceeding ten rupees; *But in its application to the Cities of Bombay, Ahmedabad, Poona and Karachi in respect of any instrument relating to immoveable property situate within the said cities and of the nature described in the Article—the same duty as is leviable on a Conveyance, article 23, ante, under the Bombay Finance (Amendment) Act, 1932 for a consideration equal to the amount or value of the property concerned as set forth in the Instrument of Revocation but not exceeding ten rupees*; Bengal, Madras, the same duty as for a Bottomry Bond, article 16, *ante*, for a sum equal to the amount or value of the property concerned as set forth in the Instrument of Revocation but not exceeding fifteen rupees.

See also "Trust", article 64, *post*.

59. **Share Warrants** to bearer issued under the Indian Companies Act, 1913 (now, as amended by Act XXII of 1936).

Proper Stamp-Duty.—Imperial, Bombay, Bengal, Madras, one and a half times the duty payable on a Conveyance, article 23, *ante*, for a consideration equal to the nominal amount of the shares specified in the warrants.

Exemptions.—Share Warrant when issued by a company in pursuance of the Indian Companies Act, 1882 (now, the Indian Companies Act, 1913 as amended by Act XXII of 1936), s. 30 to have effect only upon payment as composition for that duty, to the Collector of Stamp-Revenue, of—(*a*) one and a half per centum of the whole subscribed capital of the company, or (*b*) if any Company has paid the said duty or composition in full subsequently issues an addition to its subscribed capital—one and a half per centum of the additional capital so issued.

Scrip. See "Certificates", article 19, *ante*.

60. **Shipping Order** for or relating to the conveyance of goods on board of any vessels.

Proper Stamp-Duty.—Imperial, Bombay, one anna.

61. **Surrender of Lease**—

(*a*) when the duty with which the lease is chargeable does not exceed five rupees;

Proper Stamp-Duty.—Imperial, Bombay, Bengal, Madras, the duty with which such lease is chargeable.

(*b*) in any other case.

Proper Stamp-Duty.—Imperial, Bombay, five rupees; Bengal, Madras, seven rupees eight annas.

Exemption.—Surrender of lease, when such lease is exempted from duty.

62. **Transfer** (whether with or without consideration)—

(*a*) of shares in an incorporated company or other body corporate;

Proper Stamp-Duty.—Imperial, one-half of the duty payable on a Conveyance, article 23, *ante*, for a consideration equal to the value of the share. Bombay, twelve annas for every Rs. 100 or part thereof of the value of the share. Bengal, Madras, one-half of the duty payable on a Conveyance, article 23, *ante*, for a consideration equal to the value of the share.

(*b*) of debenture, being marketable securities, whether the debenture is liable to duty or not, except debentures provided for by s. 8;

Proper Stamp-Duty.—Imperial, one-half of the duty payable on a Conveyance, article 23, *ante*, for a consideration equal to the face amount of the debenture; Bombay, twelve annas for every Rs. 100 or part thereof of the face amount of the debenture; Bengal, Madras, one-half of the duty payable on a Conveyance, article 23, *ante*, for a consideration equal to the face amount of the debenture.

(*c*) of any interest secured by a bond, mortgage-deed or policy of insurance—
(*i*) if the duty on such bond, mortgage-deed or policy does not exceed five rupees;

Proper Stamp-Duty.—Imperial, Bombay, Bengal, Madras, the duty with which such bond, mortgage-deed or policy of insurance is chargeable.

(*ii*) in any other case;

Proper Stamp-Duty.—Imperial, five rupees; Bombay, Bengal, ten rupees (the amendment made by the Indian Stamp (Bengal Amendment) Act, 1935, to remain in force for three years only); Madras, seven rupees eight annas.

(*d*) of any property under the Administrator-General's Act, 1874 (now Act III of 1913), s. 31;

Proper Stamp-Duty.—Imperial, Bombay, ten rupees; Bengal, Madras, fifteen rupees; but in its application to the Administrator-General's Act, 1913

(*e*) of any trust property without consideration from one trustee to another trustee or from a trustee to a beneficiary.

Proper Stamp-Duty.—Imperial, Bombay, five rupees or such smaller amount as may by chargeable under clause (*a*) to (*c*) of this Article, Bengal, seven rupees eight annas or such smaller amount as may be chargeable under clauses (*a*) to (*c*) of this Article.

Exemptions.—Transfers by endorsement—
(*a*) of a bill of exchange, cheque or promissory note;
(*b*) of a bill of lading, delivery-order, warrant for goods, or other mercantile documents of title to goods;
(*c*) of a policy of insurance;
(*d*) of securities of the Government of India.
See also s. 8.

Stamp-Duty has been remitted —By notification of the Government of India, Finance Department (Central Revenues) No 8. Stamps, 2nd May, 1936:—the Stamp-duty chargeable on transfers to Government of shares of the Reserve Bank of India under clause (*ii*) of s. 4 of the Reserve Bank of India Act, 1934 (II of 1934) has been remitted prospectively and retrospectively by the Governor General in Council. By notification of Government of India, Finance Department (Central Revenues), No. 6, Stamps, 12th September, 1931, on the following:—transfer by endorsement of a mortgage of rates and taxes authorized by any Act for the time in force in British India. Deed evidencing transfer of any debenture floated by the Central Land Mortgage Bank Madras. Instrument of transfer of Government Stock registered in the book debt account. Instrument of transfer shares registered in a branch register in the United Kingdom under the provisons of s. 41 of the Indian Companies Act, 1913 (VII of 1913), (now as amended by Act XXII of 1936), which has paid the stamp-duty leviable thereon in accordance with the law for the time being in force in the United Kingdom.

63. Transfer of Lease by way of assignment and not by any under-lease.

Proper Stamp-duty.—Imperial, the same duty as a Conveyance, article 23, *ante*, for a consideration equal to the amount of the consideration for the transfer; Bombay, the same duty as for a Conveyance, article 23, *ante*; for a consideration equal to the amount of the consideration for the transfer; *But in its application to the Cities of Bombay, Ahmedabad, Poona and Karachi in respect of any instrument relating to immoveable property situate within the said cities and of the nature described in this Article —the same duty as is leviable on a Conveyance, article 23, ante, under the Bombay Finance (Amendment) Act 1932 for a consideration equal to the amount of the consideration for the transfer;* Bengal, Madras,

the same duty as for a Conueyance, article 23, *ante*, for a consideration equal to the amount of the consideration for the transfer.

Exemption.—Transfer of any lease exempt from duty.

64. **Trust**—

A—Declaration of—of, or concerning, any property when made by any writing, not being a Will;

Proper Stamp-Duty.—Imperial, Bombay, the same duty as for a Bond, article 15, *ante*, for a sum equal to the amount or value of the property concerned as set forth in the instrument but not exceeding fifteen rupees; Bengal, Madras, the same duty as for a Bottomry Bond, article 16, *ante*, for a sum equal to the amount or value of the property concerned, as set forth in the instrument, but not exceeding twenty-two rupees eight annas.

B—Revocation of—of, or concerning, any property when made by any instrument other than a will.

Proper Stamp-Duty.—Imperial, Bombay, the same duty as for a Bond, article 15, *ante*, for a sum equal to the amount or value of the property concerned as set forth in the instrument but not exceeding ten rupees; Bengal, Madras, the same duty as for a Bottomry Bond, article 16, *ante*, for a sum equal to the amount or value of the property concerned as set forth in the instrument, but not exceeding fifteen rupees.

See also "Settlement," article 58, *ante*.

Valuation. *See* "Appraisement" article 8, *ante*.

65. **Warrant for goods,** that is to say, any instrument evidencing the title of any person therein named, or his assigns, or the holder thereof, to the property in any goods lying in or upon any dock, warehouse or wharf, such instrument being signed or certified by or on behalf of the person in whose custody such goods may be.

Proper Stamp-Duty.—Imperial, four annas; Bombay, eight annas, Bengal, eight annas (the amendment made by the Indian Stamp (Bengal Amendment) Act, 1935, to remain in force for three years only) Madras, six annas.

APPENDIX F

IMPORTANT QUESTIONS ON BANKING LAW AND PRACTICE

I. RELATION OF BANKER AND CUSTOMER.

1. What is the ordinary relation between a banker and his customer? A customer draws a cheque on a branch where he has sufficient funds available for the payment of it, but his account at another branch of the same bank is overdrawn. Has the banker any right to combine the accounts and dishonour the cheque on the ground that the balance of the combined accounts is not sufficient to meet it? Is a customer who keeps an account at one branch entitled to draw on another branch?

2. State the special features of the relation between a banker and his customer. Is the former bound to honour the latter's acceptances?

3. What is meant by banker's general lien? State the circumstances under which a banker can exercise this right. Is the banker entitled to a general lien in the following cases:

(a) X deposits a box containing ornaments for safe custody, but later on becomes indebted to the banker.

(b) A banker discounts a documentary bill for his customer B. On the dishonour of the bill, B offers payment of the amount of the bill together with charges, but the banker claims lien on the documents attached to the bill for the other debts due from B.

(c) Where X who is indebted to the bank has a current account jointly with Y.

(d) A. B. & Co., a firm, of stock brokers, are indebted to the bank, and B a partner of the firm, carries a large credit balance in his current account.

4. Can a banker exercise his lien on (1) the sealed boxes kept with him by A for safe custody, (2) dividend warrants handed over to the banker for collection on A's behalf, if A's account with the banker is overdrawn?

5. In what circumstances does a banker incur liability, and to whom, in replying to a request for a confidential opinion as to the standing and means of a customer? Is a banker legally obliged to maintain secrecy with regard to the state of his customer's account?

6. Prem Chand a retired pensioner has arranged with his bank. The Pensioners, Bank Ltd., to credit his account every month with the collected pension from the Government Department. Whilst Prem Chand is on a world tour, his pension is reduced by ten per cent as an emergency cut by Government. On his return home, his Bank Pass Book shows a credit balance of Rs. 12,500 which he draws and remits to New York to repay a debt contracted during his tour. Six months later his bank draws his attention to a clerical error in the Pass Book in which he was credited with the full amount of the original pension, whereas the Bank received ten per cent less. The Bank therefore calls upon him to repay the excess of Rs. 4,200 drawn by him. Discuss the Bank's position in law *vis-a-vis* Prem Chand.

7. What steps should the banker take to close the account of an undesirable customer?

8. What do you understand by the term "customer"?

9. Discuss the general relationship between a banker and his customer. Discuss your remarks with reference to a current account, a Fixed Deposit Account and a loan account?

10. "The 'pass-book' by itself cannot be relied on as a settled account". Discuss the statement with reference to the general liability of a banker in respect of entries made by him in his customer's pass-book?

11. A sealed packet is presented to your Bank for safe-custody. State how you would deal with the transaction. What are your responsibilities, as a banker, with regard to articles or securities in safe-custody :—

(a) When the rules of your bank provide for a fee?

(b) When you do not charge a fee but carry out the business free of charge in consideration of your customer keeping a current account with a minimum balance of Rs. 10,000?

(c) When you do the business without consideration either express or implied?

12. What precaution should a banker take when he is requested to give his opinion as to the credit and standing of a customer?

" In what cases would a banker be released from his obligation to secrecy regarding his customer's account?

13. Define the position of a banker with reference to a customer who is minor: with special reference to overdrafts. If an advance to a minor is guaranteed, how far is the guarantor liable to the banker?

14. What action should a banker take as regards the balance of the account of a deceased customer who has left no will?

15. Is the banker entitled, and, if so, after what period of time to transfer to his Profit and Loss Account unclaimed credit balances lying indormant accounts of his customers?

II. FIXED DEPOSIT ACCOUNTS.

1. Write out a form of deposit receipt and indicate the reasons for its main provisions. Can a person in an emergency recover the amount of the deposit before due date?

2. Explain the risks run by a banker who buys from strangers, (*i*) cheques and (*ii*) fixed deposit receipts.

3. Discuss the legal position of a banker regarding fixed deposits.

4. A bank receives from its customer *X*, a credit containing "*inter alia*" a deposit receipt for Rs. 1,000 duly receipted by the depositor. As *X* has obtained this receipt by false pretences from the depositor, and the receipt is marked "not transferable" would the bank be liable to the depositor?

5. Is a banker justified in returning the cheque of a customer who has money on fixed deposit on the ground that the current account against which the cheque was drawn was overdrawn?

6. Is a banker justified in opening a deposit account in the name of a firm—thus, "Brown Brothers" or "Thomas Brown & Co."? Should not the account be opened in the individual names? Would it alter your answer if the firm had a current account also with the bank?

7. If a deposit stands in the name of John Brown and Maria, his wife, is the endorsement of the receipt by the former alone sufficient discharge for the bank?

8. Does a deposit receipt standing in the maiden name of a lady till after her marriage, require, when dealt with, the endorsement of her husband as well as of herself, and what would be the correct form of the endorsement?

9. What course should a banker take in the following cases:—

(*a*) When a depositor, whose deposit falls due on a Sunday, demands payment on the preceding day.

(*b*) When payment is demanded by the true owner of a deposit receipt reported to have been stolen.

(*c*) When payment is demanded by a person who has advanced money on a deposit receipt after it was stolen, supposing the advance was given in good faith.

10. A Deposit Receipt fixed for 12 months is made out in the names of A, B and C repayable to any one of them or survivor. After six months, A presents the Deposit Receipt to the Issuing Bank and asks for a loan there against. What documents should the Bank take from A to safeguard its interests?

III. CURRENT ACCOUNTS.

Explain the risks that a banker runs in opening a current account without any introduction or reference?

2. What precautions should a banker take in opening accounts in the names of minors, married women and clubs?

3. What steps should be taken before opening an overdraft account in the name of a registered Joint Stock Company?

4. What precautions should a banker take in opening an account for a Trust and in allowing the same to be operated upon?

Would any of the following be treated as Trust accounts and why:—

(1) A. B re x·y
(2) A. B account x·y
(3) A. B per x·y

5. What precaution should a banker take in dealing with the following classes of customers:—

(1) A limited liability company.
(2) A trading firm.
(3) Minors?

6. What precautions should a banker take before opening a current account in the following cases:—

(1) A limited liability company.
(2) A trading firm.

7. Under what circumstances should a banker close the account of his customer and to whom should he pay the balance?

8. A firm, A. B. & Co. has an overdrawn account with the Hindustan Bank Ltd.; A dies, and B admits C & D as partners in the same firm. What precautions, if any, has the bank to take in continuing the overdraft? What difference would it make if A had retired instead?

9. A banking account is opened for a limited company, whose Articles state that there shall not be less than three directors, but only two are appointed. The Articles empower any two to sign, and this is duly adhered to.

(a) Is a banker under any obligation to see that another director is appointed?

(b) Does he run any risk in carrying on the account with less than the minimum number of directors required by the Articles of Association?

10. An account being opened in the name of "John Smith" (Manager at Barchester of the Union Friendly Society), 8, King Street, Barchester, would this give the Society any right over the account? Smith, when opening the account, stated that it had no connection with the Society, the word "Manager" being intended only as a description of Smith.

11. Can a customer of a bank authorise a minor to sign cheques on his behalf, and is a banker justified in accepting the signature of an infant with the consent of the customer?

12. A woman opens an account in her own name "J. G. Orten" and gives the bank authority to honour cheques signed by her husband in her name, J. G. Orten only.

Is the bank safe in acting on this mandate? If the man is an undischarged bankrupt, should the bank accept his wife's authority for him to sign in this manner?

13. *A* opens an account in his own name, and gives instructions that all cheques shall be signed by himself and countersigned by *B*, his secretary. Has *A* power to give further instructions without the signature of *B* for the bank to pay cheques signed by *A* only, after several cheques have been paid with two signatures?

14. *A* is overdrawn £1,000. His bank calls upon him to take immediate steps to repay his indebtedness. He acknowledges receipt of the demand and encloses a cheque for £750 which he asks the bank to collect and credit to his account in order that in due course one of his own drawings for an equal amount shall be honoured. The bank collects and credits the enclosed cheque but warns *A* that his drawing will not be met until the entire overdraft is extinguished. In spite of this warning *A* proceeds to draw a crossed cheque for £750, which is returned unpaid and marked "R/D". Has the bank laid itself open to any danger through its course of action?

15. *A* overdraws his current account, and is asked to provide security. He lodges a certificate for an amount of a Government Stock sufficient to cover the debt. The bank's usual memorandum of deposit is signed but the stock is not transferred into nominees' names. *A* dies, his account being still overdrawn. The bank then receives notice that the security was held by the deceased in trust. Can the bank refuse to release it without repayment of the debt?

The debtor also had a deposit account which is now claimed as money held by him in trust. Can the bank retain this money in part payment of the overdraft as there was no indication that it was not the debtor's personal property?

16. A customer overdraws his account from time to time without permission. The banker, in each case, writes to the customer and the account is put in order. After

seeing the customer's name in Stubbs, the banker decides not to overpay the account again and cheques are returned. No notice is given to the customer, who sues the banker for damages for the wrongful dishonour of his cheques, alleging an arrangement to overpay. Can he succeed? Would it have made any difference if the banker had given the customer notice but had returned outstanding cheques?

17. The banking account of a private limited company is operated upon by any two directors in terms of a resolution set forth in the customary mandate provided at the opening of the account. There are three directors—*A* and *B* who are husband and wife, and *C*, their son, who is not of age. *A* falls ill and a resolution is passed conferring authority upon any director to operate upon the account and deal with all matters relating to the company banking account. As *C* is an infant, what is the position of the bank if they honour cheques on the company's account signed by him alone? Can *C* make arrangements regarding borrowing on the company's account? Will it make any difference if the bank is unaware that *C* is a minor ?

IV. Drawing and Payment of Cheques and Bills.

1. Can a customer of a bank draw cheques on ordinary slips of paper? State the reasons why the use of cheque forms is desirable.

2. A customer accepts a bill of exchange payable at his bank to the order of the drawer. Upon presentation at maturity, it is presented and paid. The customer subsequently learns that the drawer's signature is a forgery. Discuss the position of the bank. What difference would it make if the forgery is in the acceptor's signature and not that of the drawer?

3. A banker cashes two cheques for a stranger. Five days after payment it is discovered that the drawer's signature on one and the payee's endorsement on the other are forgeries. What is the position of the banker who cashed the two cheques?

4. Under what circumstances is a banker justified in refusing payment of cheques drawn upon him? What risks does he run in case of unjustifiable dishonour ?

5. (*a*) In the body of a cheque the words Rupees Seventy-nine annas three pies six are written whilst the figures read 71-3-6. How should the paying banker deal with such a cheque on presentation.

(*b*) What courses are open to a banker on whom a cheque drawn and expressed in foreign currency is presented for payment in India.

6. What risks does a banker run in honouring conditional orders of his customer ? What precautions do you suggest for the safeguarding of the interest of the banker who is asked to honour such cheques?

7. *A* draws a cheque in favour of *B* for Rs. 1,000. The bank fails before the cheque is presented. Discuss the legal position of *A*, *B* and the bank.

8. Differentiate between the liabilities of a paying banker and a collecting banker. A cheque drawn on the National Bank of India, Ltd., payable to the Union Bank of India, Ltd., account *A*/*B*, or order is cashed and placed to the credit of *C.D.* Discuss the liability of both the banks.

9. What action should a banker take on presentation of a cheque cut in two pieces pasted together?

10. Explain the statutory protection given to the banker in this country. Does it extend to drafts drawn by a branch of a bank on its head office? In what respect, does it differ from the protection given to bankers in England ?

11. A person draws a cheque and sends it by post in payment of a debt. What protection, if any, is afforded to him and his creditor by

(*a*) crossing the cheque generally ?

(*b*) crossing the cheque "not nogotiable" ?

12. A customer of a bank draws a cheque for Rs. 300 inadvertently leaving blanks before the amount both in words and in figures. The amount is fraudulently raised by the payee to Rs. 3,300, and the cheque is presented and cashed. Discuss the position of the bank.

13. Define the term "indorsement". What is the liability of the indorser of a bill and to whom? An old man with feeble sight is induced to sign his name on the back of a bill under the pretext that it is a petition to the Crown. Does he incur the liability of an indorser ? Give reason for your reply.

14. On what points should a banker satisfy himself before passing a cheque presented at his counter? If a cheque is crossed specially to more than one banker, what action should be taken on presentation by the banker on whom it is drawn?

15. Examine the following endorsements from the point of view of the paying banker:—

(1) A cheque payable to H. Billimoria and endorsed Shirin Billimoria, widow of the late H. Billimoria.
(2) An endorsement in pencil.
(3) An endorsement by a rubber stamp.

16. Give the correct forms of endorsements for cheques made payable to the order of the following payees:—

(1) Dr. Annie Besant.
(2) Miss Hira Cooper.
(3) The Hon. Secretary and Treasurer, Punjab Club.
(4) The Indian Toys Company Ltd.
(5) Western Stores per A. B. Desai.

17. Give proper endorsements for cheques made payable to the order of the following payees:—

(1) Miss Shirin Mehta (now married).
(2) Sarah's youngman—Sam Scotleaf.
(3) Indra M. A.
(4) The Atlas Mills Co. Ltd. in Voluntary liquidation.

Add reasons why you think the form of endorsement you give is the proper one in each case.

18. What is your opinion about the following endorsements on order cheques:—

(*a*) Payable to Sir David Mason and endorsed "Sir David Mason".
(*b*) Payable to Mrs. Edward Howard and endorsed as "Kathelene Howard".
(*c*) Payable to Indian Cotton Co., and endorsed "John Smith, Manager, Indian Cotton Company".
(*d*) Payable to Ram Ganpat and endorsed "Per pro Ram Ganpat. Morli Hari".
(*e*) Payable to John Brown account Janne Grace and endorsed "John Brown".
(*f*) Payable to L. Lajpat Rai and endorsed as Lajpat Rai.

19. Pass your opinion on the following endorsements on cheques:—

	PAYEE.	HOW ENDORSED.
(1)	Bearer or order.	No endorsement.
(2)	William Jones & Co.	William Jones & Co., J. Smith (all in one handwriting).
(3)	Official Receiver of Rangilal Mehta & Co.	Per Pro S. N. Gupta, Official Receiver of Rangilal Mehta & Co. R. Bose.
(4)	The Crescent Trading Co., Ltd.	For The Crescent Trading Co., Ltd., in liquidation A. Shroff } Liquidators. M. Modi }
(5)	Jayantilal Kissenchand only.	Ramanlal Parikh.
(6)	Cash or order (cheque drawn by Parmanand Bhatia).	Shadashiv Bhatia.

20. Give examples of endorsements in the following cases:—

(*i*) an unmarried woman,
(*ii*) a widow,
(*iii*) an illiterate person,
(*iv*) a firm,
(*v*) a registered company,
(*vi*) a knight,
(*vii*) cash.,

21. A banker honours a cheque and a bill domiciled with him, but afterwards finds that the drawer's signatures on both of them are forged. Examine his position in both cases.

22. Give proper endorsements for cheques made payable to the following payees:—

(*a*) The Archdiocese of Bombay.
(*b*) X. Y. & Co., Ltd.
(*c*) Lieut. Col. J. Roberts, I.M.S.

(*d*) King Bros.
(*e*) Kashinath & Jayawant Ramchandra.
(*f*) C. B. Kartak (who is since deceased).

23. Give proper forms of endorsements for cheques made payable to the order of the following:—

(1) Mrs. Rati Lal Dalal.
(2) The Executors of Sir David Mason.
(3) The Trustees of the late John Brown.
(4) The Tata Iron and Steel Co., Ltd.
(5) The Hon. Secretary & Treasurer, The Sydenham College Gymkhana.
(6) The Sydenham College of Commerce and Economics.

24. Under what circumstances can a banker stop payment of a cheque?

25. A cheque for Rs. 500 drawn in favour of X is stolen. X notifies the loss to the bank and subsequently the cheque is presented for encashment. State the precautions which a paying banker should take to safeguard his own interests.

26. On August 25, a cheque post-dated September 1 for Rs. 500 is presented and paid reducing the customer's balance to Rs. 200. Two days later a cheque dated August 23, for Rs. 600 is presented but is returned marked N/S. Discuss the legal position of the banker in this case.

27. A banker has honoured the following three cheques:—

(1) An order cheque with a forged endorsement of the payee.
(2) A crossed cheque on which the drawer's signature is a forged one.
(3) Post-dated cheque.

What risks does the banker run in each of these cases?

28. A banker cashes for his customer a crossed cheque drawn upon a local bank. What risks does he run?

29. Distinguish between the legal position of a banker in regard to cheques drawn upon him and his customers' acceptences domiciled with him.

30. A cheque payable to Ramchandra & Co. and crossed "not negotiable" is presented by Dastur & Co. through the Indian Bank Ltd. Is the paying banker justified in returning the same with the remark "the cheque appears to have been negotiated"? Give reasons for your answer.

31. A man draws a cheque for Rs. 50 and inadvertently leaves blanks before the amount both in words and in figures. The cheque is fraudulently raised by the payee. With how much can the bank debit the customer?

32. *A. B.* dies. His eldest son brings to *A. B.'s* banker cheques unendorsed payable to the order of *A. B.* and requires him to collect them. State fully the various points in banking practice which his request will raise.

33. What do you understand by the term "marked cheque"? Discuss the position of the banker and the customer:—

(*a*) When the marking of the cheque is at the instance of the customer.
(*b*) When the marking of the cheque is at the instance of the holder or the payee.

34. A draft for Rs. 1,000 is issued to a customer X by the Lahore Branch of the Deposit Bank drawn upon their Head Office in Bombay. The draft is handed over to Z in settlement of a purchase, but before presentation of the draft, X discovered that material facts have been withheld by Z which may constitute a fraud. X asks the Bank to stop payment of the draft.

What is the right course of action for the bank to adopt?

35. (*a*) Distinguish an "Endorsement in full", "Conditional endorsement" and "Restrictive endorsement".

(*b*) Define and illustrate the various forms of crossing a cheque.

36. *A* received notice from *B* that *C* had assigned to *B* a sum of money which *A* owed to *C* and *C* also instructed *A* to pay *B*. *A*, who held a general order from *C* to pay monies due to him into his account at Bank X, erroneously paid this particular sum to Bank X for *C's* account. Immediately after they received the money, Bank X allowed *C* to increase an existing overdraft limit. *B* successfully recovered from *A*, who thereupon asked Bank X to refund what had been mistakenly sent to them. What is the position of Bank X?

37. *A*, *B* and *C* open a joint account with the Blankshire Bank and arrangements are made with the bank for any two to sign together to withdraw monies. After some

time a receiving order is made against B and the Blankshire Bank are duly notified of this. A week later a cheque for £50 is presented for payment at the bank signed by A and C. Since B is a bankrupt and all funds belonging to B are vested in the Official Receiver, can the bank pay the cheque? If the bank were informed that the joint account was really a trust account and had nothing to do with B's personal affairs, could the cheque be paid? Has the fact that B is not a drawer of the cheque any significance?

38. A, B and C are partners in the firm of Jones & Co., and open an account with the X Bank in that style; an authority to the bank, signed by all three, empowers either B or C to sign cheques on that account. A is well known to the bank as a man of means and on the strength of this the firm's account is allowed to become substantially overdrawn on an unsecured basis; when the bank became uneasy about the advance and mentioned it to A, he informed them, for the first time, that he was only a limited partner. To what extent can A be held liable for the bank debt?

V. Collection of Cheques and Bills.

1. What risks does a banker run in cashing cheques drawn upon other banks? A crossed cheque is sent to a banker by a customer. The banker places the amount of the cheque to the credit of his customer's account before it is realised. What is the effect of his doing so? Would it make any difference if the drawee banker was in London?

2. H. R. Gupta opens an account with a bank describing himself as a commercial traveller and pays to his credit cheques drawn in favour of the Agra Mills. The cheques are credited to his account at once. Discuss the bank's position.

3. Enumerate the instances in which a collecting banker in India may lose his statutory protection on the ground of negligence.

4. State the course adopted on the dishonour of a bill forwarded for collection by one branch of a bank to another or to the head-office.

5. A customer of a bank pays in for the credit of his account a crossed cheque made payable to X. Y. Co., Ltd. and endorsed in blank. What risks, if any, does the bank run in collecting the cheque?

6. A crossed cheque is sent to a bank by a customer to be placed to his credit The banker credits the amount as cash before receiving the proceeds. What risks, if any, does the banker run by doing so?

7. A crossed cheque is presented for payment by a bank. Payment is declined but no reason is given. Can the presenting banker enforce a written answer giving the reasons for the refusal to pay? If so, how?

8. A cheque payable to A. Dastur or order is sent to the Eastern Bank Ltd. by B. Desai, a local merchant. When presented it is paid by the Eastern Bank Ltd. However, it is subsequently discovered that the cheque was stolen from the payee after he had indorsed it and cashed for the thief by B. Desai. Has the collecting Bank incurred any liability and if so, to whom, in the following circumstances.

(i) The cheque is open.
(ii) It is crossed, generally.
(iii) It is crossed "not negotiable".

9. State briefly the general rules governing

(a) presentment for acceptance of a bill,
(b) presentment for payment of a bill.

10. A bank's customer pays to his credit a cheque on another bank which is irregularly endorsed. The bank returns the cheque to its customer through the post for correction without presenting to the bank on which it is drawn. The cheque is stolen from the post, endorsement forged and payment obtained. What is the liability of the bank to its customers?

11. Is a collecting banker put on inquiry in respect of an irregular indorsement on a cheque sent in by his customer for collection? What is his position in law in respect of a cheque which his customer has obtained by fraud and forged an indorsement?

12. Does a banker incur any liability in collecting for a stranger

(a) an open cheque to bearer,
(b) a cheque to bearer crossed generally
(c) a cheque to bearer crossed "not negotiable".

13. A man opens an account with C Bank with an uncrossed cheque for Rs. 500 drawn on the B Bank, and leaving Rs. 200 to his credit takes away the balance of Rs. 300 in cash. After the B Bank has paid the cheque, the drawer discovers that the payee has

never received it and the payee's endorsement has been forged. The drawer claims from *C* Bank the amount of the cheque. Discuss the position of the *C* Bank.

14. What precautions should a banker take in collecting an order cheque drawn in favour of a limited company, and purported to be endorsed by the Secretary of the Company?

15. A banker holds a duly accepted bill with documents attached and on due date the drawees offer him a cheque for the amount of the bill. Should the banker hand over the documents and the bill before the cheque is cleared? Give reasons for your answer.

16. A customer pays into the credit of his account a cheque payable to his order and endorsed by him but not correctly. The cheque is returned with the remark "Endorsement irregular, will pay on banker's confirmation". The endorsement is confirmed by the collecting banker who does not notify his customer. The cheque is re-presented, but is again returned, this time with the remark "Refer to drawer". The collecting banker returns the cheque to his customer, debiting his account.

(*a*) What are the rights of the customer against his banker?

(*b*) Discuss the liability of the paying banker by reason of the remark "........ will pay on banker's confirmation"

17. A banker takes a letter of deposit over shares in a limited company, together with a common form of transfer undated and unstamped. He subsequently finds that this company is one which requires transfers to be made upon its own special form. Can the banker in case of necessity enforce registration of the common form of transfer? If not, what are his remedies?

18. Bonds are deposited at a bank by two trustees, the coupons being collected and credited to the account of the beneficiary. One of the trustees dies and the surviving trustee, relying on section 18 of the Trustee Act, 1925, that the surviving trustee has power to act, there being nothing contrary in the trust deed, demands that the bonds be handed to him. Is the bank justified in handing them over, and would they incur any liability if the surviving trustee acted fraudulently?

VI. Employment of Funds.

1. Discuss the points which a banker should consider before the employment of his funds and state the different ways in which banks in Bombay generally employ their funds.

2. Discuss the various fields of investments for a commercial bank in Calcutta.

3. Draft a letter to a constituent of a bank asking him either to deposit more securities or to repay a part of the loan so that the margin agreed upon may be maintained.

4. State the precautions which a banker should take in lending money against (*a*) Debentures, (*b*) Partly paid-up shares, (*c*) Railway Shares.

5. What do you understand by "Credit"? What stands as its basis?

6. Explain the method of taking registered Stock Exchange Securities as covers for bankers' advances and discuss their comparative advantages.

7. What considerations influence the judgment of a banker in forming an opinion about parties wanting advances?

8. State the precautions which must be taken, and the practice generally followed by bankers in advancing money against any two of the following:—

(1) Life Policies:
(2) Landed Property:
(3) Cotton.

9. Describe briefly the advisability of each of the following securities as cover for advances:—

(*a*) Government Paper.
(*b*) Shares of a bank.
(*c*) Shares of new companies.
(*d*) Partly paid-up shares.

What margin should a banker demand and what is the procedure in each of these cases?

10. Draft a letter to the Manager of the Head-Office of a bank in Bombay from its agents at Colombo, recommending and asking for permission to grant an advance by way of an overdraft to a constituent *A* on the security of 10,000 shares of the Lanca Oil Mill Ltd.

The balance sheet of the company to be enclosed with the letter.
Market value of the shares Rs. 200 each.

11. What is meant by discounting a bill? Classify the various kinds of bills presented to a bank for discounting. Is it better in the interest of a bank to discount long-dated bills or short-dated bills ? How do banks fix the rate of discount?

12. State briefly the general principles which govern secured advances and indicate the risks of making loans against documents of title to goods.

13. A Hindu client being heavily indebted to the bank is pressed to reduce the indebtedness. The bank requires him to pay in cash about Rs. 50,000. The client explains that he cannot pay in cash for some time, he offers as additional security the Title Deeds in respect of a property (inherited from his father) valued by the client at Rs. 1,00,000 at least. The monthly rents of the property aggregate Rs. 800.

(a) What questions should the bank manager put the client?
(b) What further steps should the bank take? The bank is inclined to accede to the client's request provided the bank be properly secured.

14. A banker has agreed to accept the following securities as cover for a loan of Rs. 10,000. Describe the method by which the banker should take over the securities:—

(a) 100 shares of Rs. 75, each of the Tata Industrial Bank with Rs. 37/8 paid up.
(b) 20 fully paid-up shares of Rs. 250 each, of the Indian Cement Co., Ltd.
(c) 5½% bearer War Bond of Rs. 3,000.

15. A person offers to a banker any one of the following securities as a cover for a loan of Rs. 10,000:—

(1) 16 Deferred shares of the Tata Iron & Steel Co., Ltd., quoted at Rs. 1,300 each (face value Rs. 30 each).
(2) 50 ordinary shares of the same company quoted at Rs. 380 (face value Rs. 75).
(3) 75 bales of Broach cotton quoted at Rs. 183 per bale.

Which of these should he prefer and how should he take over the security?

16. Describe and contrast the following as securities for Bank advances:—
(1) A land certificate with possessory title.
(2) A land certificate with absolute title.

17. A, B and Co., Ltd., whose latest balance sheet is given below apply for a loan of Rs. 150,000 to be secured by first mortgage debentures part of an issue of Rs. 2,70,000. Give your opinion with reasons whether or not the loan should be sanctioned.

Liabilities.	Rs.	*Assets.*	Rs.
Capital subscribed and paid up ..	45,000	Land freehold	1,00,000
5½% of First mortgage deben-tures authorised issue of Rs. 2,70,000	1,20,000	Plant	50,000
		Cash at bankers	15,000
		Book debts	35,000
Sundry creditors	80,000	Stock	35,000
		Furniture	10,000
	2,45,000		2,45,000

18. Why do commercial banks avoid accepting real estate as security for their advances? What precautions should they take in such transactions?

19. Explain the precautions which bankers take in advancing money against any three of the following securities :—

(a) Shares of Joint Stock Companies.
(b) Piece-goods.
(c) Immovable property.
(d) Oil seeds.

20. Draft a letter of guarantee giving a continuing security to the Hindustan Bank Ltd. for Rs. 5,000 to be advanced to Varma & Co.

21. State the most important terms which bankers' guarantee forms usually contain. Distinguish a "contract of guarantee" from a "contract of indemnity". What is a continuing guarantee ?

22. A bank advances money on the security of a guarantee. The guarantor learning that the principal debtor is in financial difficulties tenders to the bank the full amount of his liability under the guarantee and says, that the security deposited by the customer with the bank may be surrendered to him. What should the bank do ?

23. A customer's account is overdrawn and upon being pressed for security he offers a guarantee of his daughter who has separate means of living, and has just come of age. Discuss the value of such a guarantee as security.

24. On 15th July, 1932 title deeds in respect of a valuable landed property were deposited with "*A*" bank in a presidency town to secure an overdraft in current account limit Rs. 1,00,000. The security was in the form of simple deposit of title deeds, no legal document being executed.

On 27th August, 1932, when the balance of the account was Dr. Rs. 72,000 "*A*" bank received notice that a second charge had been created in favour of "*B*" bank, this second charge was made by means of a stamped registered legal (second) mortgage documen dated 27th August, 1932. What ought "*A*" bank to do and why?

VII. MISCELLANEOUS.

1. Joseph Jones pays Rs. 500 to the credit of his current account and owing to an error on the part of the pass-book clerk the amount is entered, in Jones's pass-book as Rs. 5,000 to his credit and the pass-book is delivered to him. What is the position of the bank?

2. To what extent does an entry in the pass-book bind
(1) the banker
(2) the customer?

3. How far is a banker bound by the entries made by him in his customer's pass-book?

4. What is a garnishee order? What steps should a banker take on receiving such an order relating to one of his customers who has
(1) a credit balance in his current account,
(2) a fixed deposit for six months,
(3) a fixed deposit repayable at seven days' notice?

5. What mistakes render money recoverable?

Money is paid into a customer's account by a third party under a mistake of fact. It is not drawn on by the customer of the bank whose account is overdrawn to a larger amount than that paid in. Can the money be recovered from the banker by the person who paid it in?

6. Who is responsible for the loss of a cheque in transit when it is sent through post? What precautions in your opinion should the drawer of a cheque take to safeguard his own interests as well as those of the payee?

7. Write short notes on the following:—
(1) Allonge.
(2) Rule in Clayton's case.
(3) Delivery order.
(4) Equitable title.
(5) (*i*) Circular Letters of Credit, (*ii*) Documentary Letters of Credit.
(6) "Effects not cleared."
(7) Letter of Indication.
(8) Circular Cheques.

8. Draft a letter to be sent by one bank to another making a confidential inquiry as to the status of a customer of the latter.

9. Explain the principal forms of publicity used by banks in western countries.

10. What is meant by banker's general lien? Can a banker claim his lien on the following:—
(*a*) Sealed boxes deposited for safe custody.
(*b*) Dividend and interest warrants sent to him for collection.
(*c*) Bills deposited with him for safe custody till maturity and collection.

11. Discuss fully the difference between negotiability and transferability. Are the following negotiable?—
(*a*) A Government of India Treasury Bill.
(*b*) A bill of lading.
(*c*) A fixed deposit receipt.
(*d*) Letters of credit.
(*e*) Government promissory notes.

12. Explain the advantages which private companies have over public companies and state the restrictions that are imposed by law upon companies of the former class.

13. Explain the meaning of the following terms :—
(1) Referee in case of need.
(2) Travellers' cheque.
(3) Accommodation bill.

14. Explain clearly the difference between a joint promissory note and a joint and several promissory note. A promissory note runs: "I promise to pay", etc. and is signed by two or more persons. Is their liability joint or joint and several ?

15. What amount of stamp duty is payable in India on:—
(a) Demand promissory notes for Rs. 350 and Rs. 12,200 respectively.
(b) 30 days' sight Hundis for Rs. 770 and Rs. 30,000 respectively.
(c) A bill drawn at 60 days' sight in England for £45. By whom and when should the requisite Indian stamps be affixed.

16. What are the derivations of the words Bank and Bankrupt?

17. What precautions should be observed by a banker in opening an account for parties as executors to an estate and what are the powers and duties of executors?

18. The public in India frequently complain of the delay in obtaining cash for a cheque presented over the counter. It is said, with some truth, that in other countries cheques are generally presented to the bank cashier, who cashes the cheques without delay and only in exceptional cases refers to the drawers' ledger account.

Explain the cause of the delay in India. State what steps should be taken to obviate the complaint.

19. Explain the subsidiary services which modern banks render to their customers. What is the reason for the backwardness of the Indian Joint Stock Bank in Foreign Exchanges?

20. Write short notes on—
(1) marked cheques,
(2) inscribed stock,
(3) dock warrants,
(4) documentary bills,
(5) mandate.

Draft a Circular Letter of Credit for £500 in favour of Paul Pry.

21. Define briefly:—
(1) Acceptor for Honour,
(2) Revolving Credit,
(3) Collateral Security.

22. State briefly the rights and obligations of the banker, the principal debtor and the surety respectively under a contract of guarantee. Would mere forbearance on the part of the bank to sue the principal debtor discharge the guarantor? Give reason for your answer.

23. What is an equitable mortgage ? What are its conveniences from the business-man's point of view ? Would you prefer it to a legal mortgage as security ? If so, why ? Does not an equitable mortgage require registration ?

24. Write short critical notes on—
(1) "Not negotiable" crossed cheque
(2) Cheque crossed "Account Payee"
(3) Donatio Mortis Causa
(4) Joint Hindu Family firm as distinguished from a partnership.
(5) A "floating charge" and its value as security.

25. *A*, a customer of the Blankshire Bank, dies on February 1 and his death is announced in the usual manner in the "Blankshire Herald" on February 2 and 3. The Herald is a well-known daily paper with a large circulation, particularly in the Blankshire area. A cheque drawn by *A* is presented to the bank on February 4 and as the Manager had not seen the newspaper announcement of his customer's death or received direct notice, the cheque was paid without question. The executors requested the bank to refund the amount of the cheque which the deceased had drawn in error. They contend that the banker's authority to pay *A's* cheques was determined by notice of his death published in the Blankshire Herald. Is the bank liable?

26. A Sub-Branch of the X Bank has its hours of business printed on its cheques; these hours are: Mondays and Thursdays 11 A. M. to 2 P. M. Since the war, however, the hours have been altered to 11 A. M. to 1 P. M. and a notice in the window advises of this change.

One Monday about 1-30 P.M., whilst the clerk is balancing his till, someone comes in and presents an open cheque, drawn on the Sub-Branch, and with the old hours printed on it: the cheque is quite in order.

Can the clerk safely pay the cheque or can he refuse the payment on the ground that it is after business hours at that particular branch?

27. A customer pays in a credit consisting of cash at the X branch of his bank, on the usual understanding that it will be forwarded to the Y branch where his account is kept.

The X branch sends the credit to the wrong branch with the result that it arrives a day later than usual. On the day that it should have arrived one of the customer's cheques was returned with a bad answer.

What is the position of the bank if the customer claims redress? Would it be different if the credit had merely been delayed a day in the post?

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